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PROJECTED ENROLLMENT CHANGES
BETWEEN 1969 AND 1970

ELEMENTARY SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.[1]
South Brookley Cap. 429	W	499 (1-6)	502 (1-6)	514 (1-6)	514 (1-6)	224 (4-5) (Caldwell 1-3)
	N	75	71	72	72	218 Tot. Cap. 1023
Morningside Cap. 561	W	740 (1-6)	631 (1-5)	636 (1-5)	636 (1-5)	369 (1-2) (Arlington-Council 3-5)
	N	0	0	120	0	222 Tot. Cap. 1584
Williams Cap. 396	W	497 (1-6)	571 (1-6)	571 (1-6)	571 (1-6)	303 (3) (Dodge 1-2, Owens 4-6)
	N	60	43	43	43	225 Tot. Cap. 2674
Maryvale Cap. 594	W	548 (1-6)	478 (1-5)	472 (1-5)	472 (1-5)	380 (4-5) (Hall 1-3)
	N	55	130	145	15	236 Tot. Cap. 1782
Mertz Cap. 528	W	461 (1-6)	496 (1-5)	402 (1-5)	402 (1-5)	402 (3-4) (Westlawn 1-2, Lienkauf 5)
	N	0	0	120	0	" Tot. Cap. 1551
Westlawn Cap. 528	W	516 (1-6)	483 (1-6)	495 (1-5)	495 (1-5)	495 (1-2) (Mertz 3-4, Lienkauf 5)
	N	0	0	75	0	" Tot. Cap. 1551

1/ Under this plan two or more schools are paired in order to house one group of elementary students. This column indicates the particular grades suggested for the school, the schools which are to be included in the pairing, and the total capacity of the buildings. Where more than one school is to be used for the one group of grades, the school other than the one in the left hand column will not be within parenthesis.

School			1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Woodcock Cap. 594	W	(1-6)	239	(1-5) 249	CONVERTED TO MIDDLE SCHOOL AS PART OF EANES		
	N		119	170			
Hall Cap. 1188	W	(1-6)	0	CONVERTED TO MIDDLE SCHOOL	(1-5) 483	(1-5) 483	(1-3) 691 (Maryvale 4-5)
	N		686		664	664	458 Tot. Cap. 1782
Arlington Cap. 462	W	(1-5)	307	CLOSE	(1-5) 2/ 350	(1-5) 350	(3-5) 737 (Morningside 1-2)
	N		237		Council 659	Council 659	437 Tot. Cap. 1584
Council Cap. 561	W	(1-5)	0	(1-5) 6	(1-5) 3/ 350	(1-5) 350	(3-5) 737 (Morningside 1-2)
	N		481	525	Arl. 659	659	Arl. 437 Tot. Cap. 1584
Emerson (Southside) 4/ Cap. 696	W	(1-6)	4	(1-6) 16	CLOSE	(1-5) 3	CLOSE
	N		354	340		518	

2/ The total capacity for the Arlington-Council facilities is 1023.

3/ Ibid.

4/ The Emerson School building was apparently abandoned sometime during the 1969-70 school year and the children were moved to the old Southside Junior High School which the Board had closed in 1968 because of its condition. The capacity figure used for Emerson is the listed capacity for the Southside plant. The capacity of the Emerson School when it was used was 528.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Lienkauf Cap. 495	W	268	258	273	273	~~410~~ 273
		(1-6)	(1-5)	(1-5)	(1-5)	(5) (Westlawn 1-2, Mertz 3-4)
	N	177	96	165	165	~~110~~ 55 Tot. Cap. 1551
Owens Cap. 1485	W	0	0	2	2	484
		(1-6)	(1-6)	(1-5)	(1-5)	(4-6) (Dodge 1-2, Williams 3)
	N	1100	1237	1414	1414	1100 Tot. Cap. 2674
Caldwell Cap. 594	W	0	13		1	291
		(1-6)	(1-6)	CLOSE	(1-5)	(1-3) (South Brookley 4-5)
	N	314	401		404	255 Tot. Cap. 1023
Howard Cap. 429	W	0	21		0	
		(1-6)	(1-6)	CLOSE	(1-5)	CLOSE
Old Shell Road Cap. 495	W	249	250	232	232	312
		(1-6)	(1-6)	(1-5)	(1-5)	(1-3) (Austin 4-5)
	N	112	120	295	295	178 Tot. Cap. 891
Crichton Cap. 759	W	507	518	438	438	481
		(1-6)	(1-6)	(1-5)	(1-5)	(3-5) (Shepard 1-2)
	N	237	243	348	348	241 Tot. Cap. 1287
Stanton Road Cap. 990	W	0	14	6	6	491
		(1-6)	(1-6)	(1-5)	(1-5)	(3-5) (Dickson 1-2)
	N	977	1077	900	900	491 Tot. Cap. 1717
Fonvielle Cap. 1155	W	0	8	CONVERTED TO MIDDLE SCHOOL	0	400
		(1-6)	(1-6)		(1-5)	(3-5) (Forest Hill 1-2)
	N	1209	1153		1000	666 Tot. Cap. 1815

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Gorgas Cap. 850	W	(1-6) 2	(1-6) 8	(1-5) 7	(1-5) 3	449
	N	1153	1150	963	963	(1-3) (Orchard 4-5) 441 Tot. Cap. 1597
Palmer Cap. 594	W	(1-5) 57	(1-5) 60	(1-5) 5/ 434	(1-5) 434	634
	N	674	660	Glen. 931	Glen. 931	(3-5) (Fonde 1-2) Glen. 717 Tot. Cap. 2112
Glendale Cap. 693	W	(1-6) 508	(1-5) 444	(1-5) 6/ 434	(1-5) 434	634
	N	149	206	Palmer 931	Palmer 931	(3-5) (Fonde 1-2) Palmer 717 Tot. Cap. 2112
Whitley Cap. 594	W	(1-5) 0	(1-5) 0	(1-5) 216	(1-5) 216	273
	N	395	420	481	481	(3-5) (Thomas 1-2) 341 Tot. Cap. 891
Brazier Cap. 1122	W	(1-6) 0	(1-5) 0	(1-5) 10	(1-5) 10	355
	N	1123	983	1022	1022	(3-5) (Ind. Springs 1-2) 812 Tot. Cap. 1551
Grant Cap. 1188	W	(1-5) 1	(1-5) 15	(1-5) 15	(1-5) 15	197
	N	1274	1250	1285	1285	(3-5) (Eight Mile 1-2) 1101 Tot. Cap. 1848
Robbins Cap. 825	W	(1-5) 6	(1-5) 2	(1-5) 7/ 638	(1-5) 638	800
	N	815	805	Hamilton 855	Hamilton 855	(3-5) (Chickasaw 1-2) Hamilton 693 Tot. Cap. 2112

5/ The total capacity for the Palmer-Glendale facilities is 1287.

6/ Ibid.

7/ The total capacity for the Robbins-Hamilton facilities is 1485.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Hamilton Cap. 600	W	629 (1-6)	625 (1-6)	638 (1-5) 8/	638 (1-5)	800 (3-5) (Chickasaw 1-2)
	N	0	0	855 Robbins	855 Robbins	693 Tot. Cap. 2112
Bienville Cap. 660	W	262 (1-6)	300 (1-6)	CONVERTED TO HIGH SCHOOL		
	N	299	313			
Chickasaw Cap. 627	W	494 (1-6)	500 (1-6)	473 (1-5)	473 (1-5)	311 (1-2) (Robbins-Hamilton 3-5)
	N	3	0	100	100	662 Tot. Cap. 2112
Shepard Cap. 528	W	409 (1-6)	---------- 9/	383 (1-5)	(1-5)	410 (1-2) (Crichton 3-5)
	N	29		160	43	150 Tot. Cap. 1287
Dodge Cap. 793	W	675 (1-6)	----------	565 (1-5)	565 (1-5)	351 (1-2) (Williams 3, Owens 1-2)
	N	65		45	45	506 Tot. Cap. 2674
Austin Cap. 396	W	396 (1-6)	----------	331 (1-5)	331 (1-5)	311 (4-5) (Old Shell Road 1-3)
	N	22		84	22	139 Tot. Cap. 891
Fonde Cap. 825	W	679 (1-6)	----------	605 (1-5)	605 (1-5)	405 (1-2) (Palmer-Glendale 3-5)
	N	11		236	11	450 Tot. Cap. 2112

8/ Ibid.

9/ The Board's plan does not propose any change in the elementary and middle schools located west of I-65 and no enrollment projection statistics are available for those schools.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Dickson Cap. 742	W	835	---------	680	680	195
	(1-6)			(1-5)	(1-5)	(1-2) (Stanton Road 3-5)
	N	193		125	125	534 Tot. Cap. 1714
Orchard Cap. 792	W	754	---------	~~660~~ 756	~~660~~ 756	313
	(1-5)			(1-5)	(1-5)	(4-5) (Gorgas 1-3)
	N	113		125	117	639 Tot. Cap. 1815
Will Cap. 792	W	657	---------	678	678	397
	(1-5)			(1-5)	(1-5)	(3-5) (Whistler 1-2)
	N	175		395	355	422 Tot. Cap. 1518
Forest Hill Cap. 660	W	560	---------	586	586	204
	(1-5)			(1-5)	(1-5)	(1-2) (Fonvielle 3-5)
	N	0		355	0	334 Tot. Cap. 1815
Whistler Cap. 726	W	227	---------	181	181	462
	(1-6)			(1-5)	(1-5)	(1-2) (Will 3-5)
	N	231		205	205	178 Tot. Cap. 1518
Thomas Cap. 297	W	222	---------	180	180	123
	(1-6)			(1-5)	(1-5)	(1-2) (Whitley 3-5)
	N	101		95	95	235 Tot. Cap. 891
Indian Springs Cap. 429	W	520	---------	535	535	190
	(1-6)			(1-6)	(1-6)	(1-2) (Brazier 3-5)
	N	12		11	11	221 Tot. Cap. 1551
Eight Mile Cap. 660	W	586	---------	280	280	98
	(1-8)			(1-6)	(1-6)	(1-2) (Grant 3-5)
	N	110		66	66	250 Tot. Cap. 1848

MIDDLE SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Rain Cap. 986	W	1296 (7-12)	1150 (7-12)	1150 (7-12)	1150 (7-12)	---------- 10/
Eanes Cap. 1218	W	966 (7-9)	911 (6-8)	980 (6-8)	980 (6-9) 11/	----------
	N	134	160	Woodcock 764	Woodcock 764	
Woodcock Cap. 594	W	USED AS ELEMENTARY SCHOOL		980 (6-9)	980 (6-9)	----------
	N			Eanes 764	Eanes 764	
Craighead Cap. 891	W	119 (6-7)	383 (1-5)	CONVERTED TO HIGH SCHOOL		----------
	N	405	512			
Williamson Cap. 1350	W	1 (8-12)	USED AS HIGH SCHOOL ONLY			----------
	N	1143				
Hall Cap. 1188	W	0 (1-6)	182 (6-8)	USED AS ELEMENTARY SCHOOL		
	N	686	573			
Dunbar Cap. 1131	W	2 (7-8)	6 (7-8)	1044 (6-9) 12/	1044 (6-9)	
	N	837	912	Central 1562	1562	

10/ Under Plan B-1 Alternative the same middle school and high school plans proposed in Plan B or Plan B-Alternative could be used. If Plan B were used, Toulminville would be substituted for Fonvielle as part of the Washington-Phillips middle school facility.

11/ Under Plans B and B-Alternative Eanes would be used with Woodcock as a Middle School. The combined capacities of the two facilities would be 1812.

12/ The total capacity for the Dunbar-Central facilities is 2639.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Central Cap. 1508	W	USED AS HIGH SCHOOL		(6-9) 1044	(6-9) 1044	----------
	N			1562	1562	
Phillips Cap. 1073	W	(7-8) 752	(7-8) 861	(6-9) 13/ 1040	(6-9) 14/ 1040	----------
	N	122	171	Wash-Fon. 1562	Wash-Fon. 1562	
Washington Cap. 1043	W	(7-9) 0	(7-9) 16	(6-9) 1040	(6-9) 1040	----------
	N	1528	1559	Fon-Phil. 1562	Phil-Toul. 1562	
Fonvielle Cap. 1155	W	USED AS ELEMENTARY SCHOOL		(6-9) 1040	USED AS ELEMENTARY SCHOOL	
	N			Phil-Wash. 1562		
Toulminville Cap. 609	W	USED AS HIGH SCHOOL			(6-9) 1040	----------
	N				Fon-Phil. 1562	
Mob. Co. Tr. Cap. 1305	W	(6-12) 0	(6-12) 102	(6-7) 432	(6-7) 432	----------
	N	1283	1177	859	859	
Prichard Cap. 609	W	(6-9) 353	(6-8) 340	(6-7) 240	(6-7) 240	----------
	N	170	167	410	410	

13/ The total capacity for the Phillips-Washington-Fonvielle facilities is 3271.

14/ The total capacity for the Phillips-Washington-Toulminville facilities is 2725.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Carver Cap. 1023	W	1	8	CONVERTED TO HIGH SCHOOL		----------
	(6-7)		(6-8)			
	N	857	867			
Trinity Gard. Cap. 899	W	0	0	380	380	----------
	(7-12)		(6-8)	(6-7)	(6-7)	
	N	1084	992	690	690	
Clark Cap. 1390	W	1089	1242	536	536	----------
	(7-9)		(7-9)	(8)	(8)	
	N	203	278	948	948	
Azalea Rd. Cap. 1015	W	1039	----------	857	857	----------
	(7-8)			(6-7)	(6-7)	
	N	38		133	133	
Scarborough Cap. 1000	W	638	----------	855	855	----------
	(6-8)			(6-7)	(6-7)	
	N	77		133	133	
Hillsdale Cap. 847	W	431	----------	858	858	----------
	(6-8)			(8)	(8)	
	N	217		131	131	

HIGH SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Rain Cap. 986	W	(7-12) 1296	(7-12) 1150	(7-12) 1150	(7-12) 1150	----------
	N	112	97	97	97	
Williamson Cap. 1350	W	(8-12) 1	(9-12) 762	16/ (10-12) 1008	(10-12) 1008	----------
	N	1143	474	Craig. 767	Craig. 767	
Central Cap. 1508	W	(9-12) 0	(9-12) 17	CONVERTED TO MIDDLE SCHOOL		----------
	N	1470	1372			
Murphy Cap. 2813	W	(9-12) 2602	(9-12) 2171	(10-12) 1440	(10-12) 1440	----------
	N	239	425	1360	1913	
Toulminville Cap. 609	W	(10-12) 0	(10-12) 20	(12) 0	CONVERTED TO MIDDLE SCHOOL	----------
	N	1135	1145	365		
Blount Cap. 1972	W	(8-12) 0	(9-12) 22	Vig.-Bien 15/ (9-12) 1908	Vig-Bien (9-12) 1908	----------
	N	1893	1875	Carver 2962	Carver 3516	

16/ The total capacity for the Williamson-Craig-Head facilities is 2241.
15/ The total capacity for the Vigor-Bienville-Blount-Carver facilities is 5424.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Carver Cap. 1023	W	USED AS MIDDLE SCHOOL		Vig-Bien 1908 (9-12)	Vig-Bien 1908 (9-12)	----------
	N			Blount 2962	Blount 3516	
Vigor Cap. 1769	W	1504 (10-12)	1296 (9-12)	Blt-Carv 1908 (9-12)	Blt-Carv 1908 (9-12)	----------
	N	195	468	Bienville 2962	Bienville 3516	
Bienville Cap. 660	W	USED AS ELEMENTARY SCHOOL		Blt-Carv 1908 (9-12)	Blt-Carv 1908 (9-12)	----------
	N			Vigor 2962	Vigor 3516	
Mobile Co. Tr. Cap. 1305	W	0 (6-12)	102 (6-12)	USED AS MIDDLE SCHOOL ONLY		----------
	N	1283	1177			
Davidson Cap. 1972	W	1738 (9-12)	2150 (9-12)	1738 (9-12)	1738 (9-12)	----------
	N	604	70	604	51	
Shaw Cap. 1044	W	1242 (9-12)	1250 (9-12)	1150 (9-12)	1150 (9-12)	---------
	N	237	240	471	196	

[Maps omitted – see original record]

District Court Order of January 28, 1970

To the Board of School Commissioners of Mobile County, Alabama, and Each Member Thereof:

At pretrial conference in this case held Thursday, January 22, 1970, both the Government and the School Board were requested to submit to the Court at 9 A.M., Tuesday, January 27, 1970, (yesterday) revision of plans submitted by the School Board on December 1, 1969, and revision of plans submitted by Health, Education & Welfare as Plan B Alternative, on December 1, 1969, in accord with the mandates of the Supreme Court and the Fifth Circuit Court of Appeals. The Government submitted such revised plan at 9 A.M. on Tuesday, January 27, 1970, but the School Board did not do so, and as of 9:30 A.M. this date, has not done so.

The School Board is the most knowledgeable on the subject and upon whom the Court would prefer to seek advice.

The School Board is now ORDERED to forthwith submit to the Court such revised plan.

DONE at Mobile, Alabama, this the 28th day of January 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of January 31, 1970

This Court entered a decree in this case on August 1, 1969, under which the public school system of Mobile County opened and operated through the first semester of 1969. That part of the desegregation plan devised in said order which was to be implemented in September 1970, was in accord with recommendations of Health, Education and Welfare, with alterations or modifications to meet particular educational principles. This Court's decision was appealed and was affirmed by the Fifth Circuit Court of Appeals sitting en banc on December 1, 1969.

On January 14, 1970, the Supreme Court of the United States reversed the Fifth Circuit Court of Appeals and remanded the decision to the Court of Appeals for further proceedings consistent with the Supreme Court's opinion. On January 21, 1970, the Court of Appeals issued its mandate to this Court, which in effect stated that there could be no deferral of school desegregation beyond February 1, 1970.

Faced with this mammoth task, the Court on its own motion sought the advice and professional assistance of all the parties. On the afternoon of January 23, 1970, the Court conducted a pretrial conference with the attorneys representing all of the parties and at such time the Court requested attorneys for the school board and the government to submit a revision of the plans submitted by the school board on December 1, 1969. The Court realizing its plan of August 1, 1969, in some respects was still a dual system, ordered the school board to submit a plan not later than December 1, 1969, which would disestablish such system, which plan was to be implemented on September 1, 1970.

The Court also called upon the Government for revision of the HEW plan which the government thought should be followed for the remainder of the present school year. These revised plans were to be furnished to the Court by 9 o'clock A.M. on the 27th day of January. The government furnished the requested plans. The school board did not, and by order dated January 28, 1970, at 9:30 A.M., the school board was ordered to submit such revised plans. As of this date, they have not done so. The school board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect, but the ten day period from January 21st to February 1st obviously allows inadequate time to work out an ideally legal and workable plan for educating approximately 75,000 school children, particularly when the change comes in mid-semester. This plan pleases no one—the parents and students, the school board, Justice Department, NAACP, nor in fact, this Court. The Court's plan closes schools which the school board wants open. It opens schools which the Justice Department wants closed. But a decision had to be made and it was the duty and the responsibility of this Court to make that decision. The Supreme Court of this country has spoken, and this Court is bound by its mandate. It is the law. It must be followed.

The revised HEW plan which the government submitted to the Court would require no busing of students, but ex-

tensive pairing of several schools. An alternate plan submitted by HEW and upon which the plaintiffs insist, would require the busing of children from areas of the city to a different and unfamiliar area as well as the pairing of many schools. The distance between some of the schools by vehicular traffic would be approximately fifteen miles. The government plan and the HEW plan would materially change the grade structure for approximately thirty-four schools, and in some instances, would completely change each school's identity. The government asked the Court to close many of the high schools which are attended by 90% or more of Negro pupils, among them, Central High and Mobile County Training. This I am unwilling to do as I think it would be unfair to the Negro population of this city. Many of them have graduated from one or more of these schools. They take pride in them. In many areas, including sports, there is much rivalry between these schools and I do not think the traditions which they have created over the years should be destroyed.

Under one of the HEW plans it would have necessitated a child in the Austin area to attend Austin in the fifth grade and from the sixth through ninth grades he would have to change three times, namely, to Phillips, Washington and Toulminville, and in the tenth grade to Murphy, thus attending five different schools in six years. Under one of the HEW plans of pairing schools, a child would have gone to Dodge in the first and second grades, Williams in the third grade, and Owens in the fourth, fifth and sixth grades. The distance from Dodge to Williams is approximately 8.6 miles and from Williams to Owens approximately 7.4 miles and from Dodge to Owens, approximately 11.4 miles.

Admittedly these material changes in grade structures and in identity, and the pairing of schools and the necessity of busing great distances, are motivated for the sole purpose of achieving racial balance. In this Court's opinion, the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance. By the same token, the Court is of the opinion that such techniques in certain instances, must be utilized to remove the effect of the dual school system. Therefore, it was necessary to change the grade structure on a limited basis and in one instance, the identity of a school. These alterations were not motivated to achieve racial balance, but to desegregate the public school system.

I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation, for the sake of litigation, without regard to the rights of the children and parents involved.

The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools. Laboring under the handicap of time, the Court has accomplished what it finds to be the plan most workable under the circumstances, both from an educational and implemental point of view.

Therefore, is it ORDERED, ADJUDGED and DECREED by the Court that the area attendance desegregation plan sub-

mitted by the school board on December 1, 1969, for those school zones lying East of I-65, with one exception set out below, is hereby adopted and put into effect as of February 1, 1970, with the following exceptions:

ELEMENTARY SCHOOLS EAST OF I-65

1. The Emerson Elementary School serving Grades 1-6 shall be closed. Those students who attend Emerson will now attend Council or Leinkauf Elementary Schools, as illustrated by the map attached hereto and identified as Exhibit "A". Those sixth grade students now attending Emerson shall be enrolled at Hall Junior High School. The placement of the Emerson students in other area attendance zones are reflected by modification of the Council-Leinkauf area attendance zones.

MIDDLE SCHOOLS EAST OF I-65

2. The Hall area attendance zone shall be increased to relieve the overcrowding situation at Dunbar Junior High and to include those sixth grade students who previously attended Emerson or Old Shell Road. The area attendance zones for Washington Junior High, Phillips Junior High, Mae Eanes Junior High, and Dunbar Junior High, have all been altered to achieve a desegregated school system, as reflected by area attendance zone map attached hereto and identified as Exhibit "B".

HIGH SCHOOLS EAST OF I-65

3. Trinity Gardens School is hereby changed to a middle school serving Grades 6-8. The high school students

who previously attended Trinity Gardens shall attend Blount High School.

Murphy High School area attendance zone has been increased to achieve desegregated school system and to eliminate the overcrowded enrollment at Toulminville High School, as reflected by area attendance zone map attached hereto and identified as Exhibit "C".

It is FURTHER ORDERED, ADJUDGED and DECREED by the Court that those graduating high school seniors who are not presently attending the high school which serves their area under the Court's plan submitted this date, shall be allowed to remain in the high school which they presently attend for the remainder of the 1969-70 school year.

However, since the identity of the Trinity Gardens school has been changed from a high school to a school serving the middle grades, the seniors at Trinity Gardens shall now be attending Blount High School. Under the circumstances, the Court authorizes the Board, faculty, and the students themselves, in instituting this plan, to maintain the identity of the Trinity Gardens seniors as a unit by whatever proper programs they deem necessary at Blount High School.

SCHOOLS LYING WEST OF I-65

4. The Davidson High School attendance area is hereby enlarged to include those students who previously attended Murphy High School under the area attendance zone lying West of I-65 as illustrated by Exhibit "C" attached hereto.

It is FURTHER ORDERED, ADJUDGED and DECREED that the area attendance zones lying West of I-65 as decreed by

this Court on August 1, 1969, with the one exception above noted, shall remain in effect.

Paragraph VII of the Court's order of August 1, 1969, pertaining to faculty is incorporated in its entirety in this order and should be implemented forthwith.

The Board shall publish or cause to have published in the local newspaper, the complete text of this decree and the maps attached, not later than Wednesday, February 4, 1970. In addition, the school board shall post or cause to be posted, in a conspicuous place in each school in the system in which this decree changes area attendance zones from that established in the August 1, 1969, decree, and at the offices of the school board.

The Court finds that this decree disestablishes the operation of a dual school system in Mobile County and establishes a unitary system.

This plan shall be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

DANIEL H. THOMAS
United States District Judge

[Maps omitted—see original record]

District Court Order of February 4, 1970

In the Court's order of January 31, 1970, the majority to minority transfer policy, as set out in the Opinion of the Fifth Circuit Court of Appeals dated December 1, 1969, was inadvertently omitted.

NOW THEREFORE, the order of this Court entered in this cause on January 31, 1970, is amended by adding thereto the following:

The School Board shall permit a student attending a school in which his race is in the majority to choose to attend another school where space is available, and where his race is in the minority.

DONE at Mobile, Alabama, this the 4th day of February 1970.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Opinion of February 16, 1970

Before

TUTTLE, WISDOM and GOLDBERG,
Circuit Judges

GOLDBERG, *Circuit Judge*:

For almost a decade there have been judicial efforts to desegregate the schools of Mobile County, Alabama. We do not tarry now to count the many appeals to this court in furtherance of this hope, for we are concerned today with only a single recent episode in this almost Homeric odyssey. We wonder when the epilogue will be written.

The latest episode is this appeal by David L. Jacobs, Bill Rosser, and the American Friends Service Committee from a preliminary injunction issued by the United States District Court for the Southern District of Alabama. The injunction grew out of a series of demonstrations in April and May of 1969 in support of school desegregation and other civil rights objectives in Mobile County. According to the school board's affidavits—which are contradicted by appellants' affidavits—these demonstrations led to absenteeism on the part of some students and resulted in substantial disruption of the educational program in some schools.

On May 8, 1969, the Board of School Commissioners of Mobile County filed a petition in the district court, asking that appellants and others be made parties to the ongoing school desegregation proceeding, claiming that they were responsible for organizing and directing the demonstrations. In its petition the school board asked that these

parties be enjoined from engaging in activities designed to dissuade students from attending school or to disrupt the school board's operation of the Mobile County schools. The district court entered an order making appellants and others named by the petition parties to the proceedings and scheduled for May 12, 1969, a hearing on the school board's petition for an injunction. The court also directed that testimony would be by affidavit only.

When the hearing was convened on May 12, appellants filed a motion to dismiss the petition and another motion asking that any hearing include oral testimony or depositions. The court denied the latter motion, but did not then rule on the motion to dismiss. In response to a request by appellants for additional time to prepare, the court continued the proceedings until the next day.

When the hearing reconvened on May 13, appellants filed a supplement to their motion to dismiss and again noted their objection to proceeding by affidavit only. The court summarily denied the motion to dismiss and reiterated its previous ruling that the proceedings would be by affidavit only. During these proceedings on May 13 all parties submitted their testimony by affidavit, and the court took the matter under advisement, allowing the parties one additional day for the submission of counter affidavits.

On May 16, 1969, the district court issued a preliminary injunction by which the appellants were

> "enjoined and restrained from obstructing and preventing or attempting to obstruct and prevent, the attendance in classes of students and faculty members by inducement, encouragement, assistance, intimidation,

> or other activities which seek to dissuade students and faculty members from attending classes, or seeks [sic] to disrupt in any way, the operation of the Mobile County Public School System."

This injunction was not accompanied by any findings of fact or conclusions of law.

After the issuance of the injunction appellants filed a motion in the district court requesting a stay of the injunction. This motion was denied by the district court. Appellants then sought from this court a stay of the injunction pending appeal. On May 22, 1969, this court issued an order granting the stay "except as to picketing activity on school property." Appellants now seek complete dissolution of the injunction; the school board seeks to uphold the full sweep of the injunction as originally issued by the district court.

In their attack on the injunction appellants raise several issues concerning the constitutionality of the injunction and the procedural fairness of the proceedings below. We are unable to decide these issues because of the incomplete and inconclusive state of the record. Since the trial court failed to give us the benefit of findings of fact and conclusions of law, we have before us only the numerous affidavits introduced by the parties.

[1, 2] In failing to make findings and conclusions the trial court violated Rule 52(a) of the Federal Rules of Civil Procedure. Rule 52(a) provides in pertinent part that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, * * * and in granting or refusing interlocutory injunctions the court

shall similarly set forth the findings of facts and conclusions of law which constitute the grounds of its action." It is well established that a district court issuing a preliminary injunction must comply with the provisions of this rule. Carey v. Carter, 1965, 120 U.S.App.D.C. 182, 344 F.2d 567; Chas. Pfizer & Co. v. Zenith Laboratories, Inc., 3 Cir. 1964, 339 F.2d 429; Carpenters' District Council v. Cicci, 6 Cir. 1958, 261 F.2d 5; Bowles v. Russell Packing Co., 7 Cir. 1944, 140 F. 2d 354; 2B Barron & Holtzoff, Federal Practice and Procedure §1126 (1961). In the words of the Supreme Court, a full and fair compliance with Rule 52(a) "is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction." Mayo v. Lakeland Highlands Canning Co., 1940, 309 U.S. 310, 316, 60 S.Ct. 517, 520, 84 L.Ed. 774, 779; see Featherstone v. Barash, 10 Cir. 1965, 345 F.2d 246, 249-250. Consequently, "[w]here the trial court fails to make findings, or to find on a material issue, and an appeal is taken, the appellate court will normally vacate the judgment and remand the action for appropriate findings to be made." 5 Moore's Federal Practice ¶52.06[2], at 2718 (2d ed. 1969); see, e. g., Chas. Pfizer & Co. v. Zenith Laboratories, Inc., *supra*.

[3, 4] We recognize that compliance with Rule 52(a) is not a *jurisdictional* requirement for appeal; an appellate court may decide the merits of an appeal in the absence of fact findings in the rare case in which "a full understanding of the issues [can] be reached without the aid of findings." Urbain v. Knapp Brothers Manufacturing Co., 6 Cir. 1954, 217 F.2d 810, 816, cert. denied, 349 U.S. 930, 75 S.Ct. 772, 99 L.Ed. 1260; *accord,* Huard-Steinheiser, Inc.

v. Henry, 6 Cir. 1960, 280 F.2d 79, 84; Featherstone v. Barash, *supra*, 345 F.2d at 250-251; Hurwitz v. Hurwitz, 1943, 78 U.S. App.D.C. 66, 136 F.2d, 796, 799, 148 A.L.R. 226; see Mongiello Bros. Coal Corp. v. Houghtaling Properties, Inc., 5 Cir. 1962, 309 F.2d 925, 929-930. We state most emphatically, however, that the present case is *not* one of those unusual cases in which the absence of fact findings can be overlooked by the appellate court. In this case we cannot possibly reach "a full understanding of the issues" in the absence of findings by the trial court.

It is an understatement to say that the facts in this case are hotly disputed. The parties by their affidavits present sharply different versions of the factual context in which the injunction was issued. On the basis of these conflicting affidavits it is utterly impossible to ascertain in more than the most general way such basic factual data as the nature of the demonstrations which led to the issuance of the injunction, the role played by the appellants in these demonstrations, and the effect of these demonstrations on the school system. The un-illuminating state of the present record totally precludes meaningful appellate review of the issues presented by the issuance of the district court's injunctive order.

The order of the district court granting the preliminary injunction is vacated, and the cause is remanded.

District Court Order of February 27, 1970

Motion to require service of desegregation plan filed on January 2, 1970 by plaintiffs is GRANTED.

District Court Order of March 12, 1970

The Board of School Commissioners of Mobile County, Alabama, petitioned this Court on February 18, 1970, March 2, 1970, and March 10, 1970, to modify its order of January 31, 1970, in the above-styled cause.

Now after careful consideration thereof, it is ORDERED, ADJUDGED and DECREED by this Court that the order of January 31, 1970, is hereby amended to include the following:

1. The attendance zone boundary line between Westlawn Elementary School and Mertz Elementary School shall be located as was designated by this Court in its Order of August 1, 1969.

2. The School Board shall continue to maintain a sixth grade at Mertz Elementary School for the remainder of this school year and the sixth grade students of Mertz who were reassigned to Mae Eanes Junior High School by the January 31, 1970, Order shall be permitted to remain at Mertz for this school year.

3. The School Board shall continue to maintain a sixth grade at Morningside Elementary School for the remainder of this school year and the sixth grade students of Morningside who were reassigned to Mae Eanes by the January 31, 1970, Order shall be permitted to remain at Morningside for this school year.

4. The Board shall maintain at Trinity Gardens School for the remainder of this school year only, a twelfth grade program, and the twelfth grade students of Trinity Gar-

dens who were reassigned to Blount High School by the January 31, 1970, Order shall be permitted to remain and graduate from Trinity Gardens.

5. The Board shall continue to maintain a ninth grade at Mae Eanes Junior High School and the ninth grade students of Mae Eanes who were reassigned to Murphy High School and Williamson High School by the January 31, 1970, Order shall be permitted to remain at Mae Eanes School for this school year only.

DONE at Mobile, Alabama, this the 12th day of March 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of March 16, 1970

On January 14, 1970, the Supreme Court of the United States reversed this case and the Fifth Circuit on January 21st, ordered this Court to enter its plan for implementation on February 1, 1970. This Court entered its decree on January 31, 1970, and ordered that it be implemented forthwith. The Board of School Commissioners announced that it would be implemented on March 16, 1970, today.

The Legislature of Alabama passed the Freedom of Choice Bill on the 4th day of March 1970. The School Board then passed a resolution to the effect that it would not follow this Court's decree but would continue to operate as it has heretofore.

In 1809, Chief Justice Marshall said: "If the legislators of the several states may, at will, annul the judgments of the Courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solumn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals."

The School Board is required to follow the order of this Court of January 31, 1970, as amended, and if the same is not followed within three days from this date, a fine of $1,000 per day is hereby assessed for each such day, against each member of the Board of School Commissioners.

The plaintiffs in this case, on the 10th day of March 1970, filed a petition requesting this Court to declare the Freedom of Choice Act of the Legislature of the State of Alabama unconstitutional. This case is not the proper vehicle in which to test the constitutionality of said Act. The said petition is therefore dismissed.

Done at Mobile, Alabama, this the 16th day of March 1970.

Daniel H. Thomas
United States District Judge

Court of Appeals Order of March 25, 1970

BY THE COURT:—

In order that this court might undertake to decide whether the Mobile County School System as a whole has been converted into a unitary school system, it is necessary that this court be supplied with additional information. Therefore, pursuant to the authority contained in 28 USCA § 2106, the district court is directed to supplement its findings of fact in the within matter by filing the following:

(1) a table showing the school population, by race, as of the present time in each elementary, junior high, senior high, and special school in the system;

(2) a table showing the projected school population, by race, of each school in the system under (a) the school board plan submitted December 1, 1969, (b) the original HEW plan, and (c) HEW plan B-alternative;

(3) a table showing the instructional positions, by race, as of the present time in each school in the system;

(4) information describing the transportation system employed by the Mobile County schools so that this court might determine whether it is operated on a non-segregated and otherwise non-discriminatory basis;

(5) information as to whether there exists a biracial advisory committee to the school board, and if not whether Negroes are represented on the school board;

(6) information regarding whether all extracurricular activities, including sports, are being operated on a non-segregated basis throughout the system;

(7) information regarding whether all facilities are being operated on a non-segregated basis;

(8) whether the school board has complied with the requirement announced in *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1969, —— F.2d —— (consolidated cases en banc) [Nos. 26285 et al, slip opinion dated December 1, 1969] that all school construction, school consolidation and site selection (including the location of temporary classrooms) in the system be done in a manner which will prevent the recurrence of the dual school structure by taking into consideration residential housing patterns;

(9) information as to whether there exists a majority to minority transfer policy. If so, describe.

These findings of fact should be filed with this court within 20 days from the date hereof. Jurisdiction of this appeal is retained in this court during the limited remand for the purposes herein stated.

REMANDED for further proceedings consistent herewith.

District Court Order of March 31, 1970

Pursuant to Order of the United States Fifth Circuit Court of Appeals dated March 25, 1970, received by the Clerk of this court March 30, 1970, the Board of School Commissioners of Mobile County is ordered and directed to furnish the court the information set out in said order in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) not later than April 10, 1970, at 3:00 p.m. Said information is to be furnished in affidavit form.

Done at Mobile, Alabama, this the 31st day of March, 1970.

DANIEL H. THOMAS
Chief Judge

Plaintiffs' Motion to Establish Procedures on Remand Filed April 6, 1970

Plaintiffs, Birdie Mae Davis, et al., move this Court for an order establishing the following procedures on remand:

1. The School Board shall be required to file by April 7, 1970 proposed findings of fact on each matter delineated in the Fifth Circuit's order of March 25, 1970.

2. The Court shall hear evidence and arguments in respect to the findings required by the remand on April 14, 1970.

District Court Order of April 14, 1970

1. Motion to establish procedures on remand, filed by plaintiffs, Birdie Mae Davis, et al. on April 6, 1970, DENIED.

District Court Order of April 14, 1970

In response to Order of the United States Fifth Circuit Court of Appeals dated March 25, 1970, and received by the Clerk of this court on March 30, 1970, this Court entered an order on March 31, 1970, directing the Board of School Commissioners of Mobile County to furnish the Court information as requested in the March 25th Order of the Fifth Circuit Court of Appeals. In response, the School Board filed on April 10, 1970, an Affidavit of James A. McPherson, together with exhibits attached thereto, purporting to give the information requested by the Order of the Court of Appeals dated March 25, 1970.

The Court adopts as its finding of fact the statistical information furnished by said exhibits. The Court believes that the general information furnished therein, excluding self-serving declarations and speculative opinions, is correct and furnishes the information requested by the Court of Appeals in its Order of March 25, 1970. Said affidavit and attachments are submitted herewith in accordance with said Order.

DONE at Mobile, Alabama, this the 14th day of April 1970.

DANIEL H. THOMAS
United States District Judge

Affidavit of James A. McPherson, Filed on April 10, 1970

STATE OF ALABAMA
COUNTY OF MOBILE

Personally appeared before me the undersigned authority in and for said county and said state, JAMES A. MCPHERSON, who being by me first duly sworn, did make affidavit and say:

My name is JAMES A. MCPHERSON. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I hold the number two administrative position in the school system, ranking immediately below the Superintendent. Prior to assuming this position I was an Assistant Superintendent, in charge of the Division of Pupil Personnel and Special Services. I have also had a number of years experience in the system in other capacities, such as teacher and principal. As Associate Superintendent I have had the primary administrative responsibility of working with the desegregation process that has been in progress in the school system since 1963. I have testified in the United States District Court, Southern District of Alabama, on a number of occasions in connection with the continuing litigation there concerning this desegregation process. I have been called to testify at various times by both the plaintiffs and the defendant School Board, as well as by the United States Department of Justice. My personal and professional qualifications appear fully in the record from these past occasions, consequently, I will not set them out again here.

Affidavit of James A. McPherson,
Filed on April 10, 1970

This affidavit is made specifically for the purpose of submission to the United States District Court, Southern District of Alabama, in response to and compliance with the Order of that Court dated March 31, 1970. I make this affidavit based in part upon information of which I have personal knowledge and based in part upon information and reports given me, at my request, by other members of the professional staff of the School Board and other agents, servants or employees of the School Board, upon whom I normally rely for information and reports in the regular course of business.

(1) In response to question number (1) of the Order I make the following comments:

The total desegregation plan for the whole system, now in full implementation, assigns every student in the system to a school on the basis of a unitary system of geographic attendance zones drawn by the District Court itself, either upon the specific recommendation of H.E.W. consultants, or upon the basis of the Court's knowledge and reconciliation of information submitted to it by the professional staff of the School Board, and recommendations made by the H.E.W. consultants, NAACP attorneys, Justice Department Attorneys and the School Board.

On August 1, 1969 the District Court entered a Decree which set out a desegregation plan that fully desegregated all of the school system *except* that part of the system lying East of Interstate Highway 65. Attached hereto, labeled Attachment A, is an enrollment report setting out by race the number of students actually enrolled in each school in the system *except* those lying East of Interstate Highway

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65, as of September 26, 1969, as a result of implementation of this August 1, 1969 Decree.

This Decree of the District Court was reviewed by the Court of Appeals and affirmed. This Decree and the desegregation plan it sets out have been fully implemented in good faith throughout the 1969-70 school year.

Also attached hereto, labeled Attachment B, is a further enrollment report setting out by race the number of students actually enrolled in *every* school in the system, as of September 26, 1969, as a result of implementation of the August 1, 1969 Decree. We do not have, subsequent to this September 26, 1969 report of enrollment, any comprehensive report of enrollment figures showing the actual enrollment, by race, of *every* school in the system.

On January 31, 1970 the District Court entered another Decree that set out a further desegregation plan covering *only* that part of the system lying East of Interstate Highway 65. This Decree fully desegregated that part of the school system; and, according to the Court, when taken with the earlier decree of August 1, fully desegregated the entire school system. This Decree and the desegregation plan it sets out has also been fully implemented in good faith, since March 20, 1970.

Attached hereto, labeled Attachment C, is a report covering just those schools affected by the January 31, 1970 Decree (being all of the schools lying East of Interstate Highway 65, as well as one high school, Davidson, lying West of Interstate Highway 65, which was also affected), setting out the number of students by race that were *assigned* to each school East of Interstate Highway 65 on March 20, 1970 as a result of and on the basis of the plan set out in the January 31, 1970 Decree.

Affidavit of James A. McPherson,
Filed on April 10, 1970

There are no comprehensive official enrollment figures accurately showing actual enrollment in these schools East of Interstate Highway 65, since implementation of the January 31, 1970 Decree began. We took hurried enrollment samplings by telephone over a period of several days from March 20 through March 26, to get a general running picture of the extent of resistance to and avoidance of our efforts to implement the January 31 Decree; but we know that these figures are incorrect and do not accurately reflect either the number of students by race *now enrolled* in these schools, nor the number of students by race *assigned* to the schools by the desegregation plan contained in the Decree. Attached hereto, labeled Attachments D1, D2 and D3, are copies of these enrollment samplings for March 20-23, March 25 and March 30 respectively.

Upon comparison the various attachments do not coincide. There were obviously more students assigned across racial lines by the January 31, 1970 Decree—that is, negroes assigned to traditionally white schools and vice-versa (Attachment C),—than were in attendance across racial lines when the enrollment samplings were made after implementation of the Decree (Attachments D1, D2 and D3). The difference between the two results from a number of factors.

First, on March 20-30 when the enrollment counts were made, many students, particularly white students assigned to predominantly negro schools, were engaged in a boycott of those schools, some apparently permanently and other apparently temporarily in a show of anger and protest over their forced reassignment during the middle of a semester.

More significantly however, many of the white students in the system involuntarily assigned to predominantly

negro schools have simply refused to accept the assignments. This resulted not only with implementation of the January 31, 1970 Decree, but the August 1, 1969 Decree as well. They have done so in a variety of ways; some have moved their residences to another attendance zone; other have obtained transfers under the transfer provisions set out in the plan; many have moved completely out of the system; several thousand have enrolled in private schools; and hundreds of others have apparently just dropped out of school altogether.

The School Board has in good faith made the assignment of students required by the Court Ordered desegregation plan, and has refused to assign students in a manner contrary to the Court's Orders. The failure of these students to *attend* school as assigned is essentially beyond the control of the School Board; and illustrates somewhat the inherent futility of large scale forced integration.

If we must play the numbers game, it is manifest that the constitutional sufficiency of the desegregation plan should be measured by the number of students it *assigns* across racial lines, rather than by the number of students who actually enroll and attend, greatly diminished from the number assigned by various devices beyond the control of the School Board, or even the effective control of the Court.

(2) Because of the length of the answer to question number (2), I have deferred the answer and have included it at the end of this affidavit immediately after the answer to question number (9).

(3) In response to question number (3) of the Order I make the following comments:

Affidavit of James A. McPherson,
Filed on April 10, 1970

Attached hereto, labeled Attachment E, is a table showing the instructional positions, by race in each school in the system, as of April 7, 1970.

Every school in the system has a bi-racial faculty. It should be noted that there are negro principals in charge of predominantly white faculties; and negro principals in charge of predominantly white student bodies. It should also be noted that there are white principals in charge of predominantly negro faculties; and white principals in charge of predominantly negro student bodies.

Your attention is also directed to the previous report on faculty filed in the District Court at the direction of the Court on November 26, 1970, which showed an integrated faculty in every school at that time also.

(4) In response question number (4) of the Order I make the following comments:

Mobile is a combined city-county school system, with many rural schools. Thus, in the traditional manner of rural schools systems in this state, there are a substantial number of school buses operated by the School Board to transport students in the rural areas of the county to these rural schools. A few buses have also been used to provide transportation for a small number of students residing in remote outlying areas of the city.

This transportation system is operated on a non-segregated and non-discriminatory basis in every respect. Routes are arranged without regard to race; students are not assigned to busses on a racial basis; nor are they segregated within the buses. The same quality and extent of

Affidavit of James A. McPherson,
Filed on April 10, 1970

service is provided to all areas of the county without reference to the race of the students living in the areas. Drivers are selected on the basis of character, performance, ability to handle the bus, and location of their home in relation to the beginning of the bus route.

At one time the Board operated a dual transportation system, with overlapping bus routes. Each bus carried students of only one race to one school or another, based upon race. This is no longer the case.

The once dual aspect of the system no longer exists. Schools in the rural part of the system serve specific geographic attendance zones, drawn by HEW experts and approved by both the District Court, and on review, the Court of Appeals; every zone is bi-racial and every school is integrated. School buses are routed in such a manner as to transport all students in each attendance zone to the school serving the zone. These routes are drawn without regard to race, they do not overlap, and each bus picks up and transports every student on its route regardless of the race of the student.

(5) In response to question number (5) of the Order I make the following comments:

There is no "bi-racial advisory committee to the School Board", as such. However, the Board draws assistance from numerous bi-racial groups.

From time to time the School Board has authorized the creation of advisory committees. The persons approved by the Board for membership on such committees have been those who possessed the highest qualifications to render meritorious service without regard to race. Although

Affidavit of James A. McPherson,
Filed on April 10, 1970

the Board has not activated an advisory bi-racial committee, members of its Staff from time to time, with Board approval, have participated in activities sponsored by advisory bi-racial committees in the community, thus meeting the needs for communications between white and black citizens in the community.

The Board holds two regular meetings each month, the first on the second Wednesday and the second on the fourth Wednesday. All fourth Wednesday meetings are open to delegations. Both black and white citizens alike avail themselves of the opportunity to communicate directly with the Board in such meetings. In addition, leaders of citizens in their respective communities from time to time direct communications to the Superintendent in which they express their concerns, make recommendations and make requests for extended services in their local schools. These communications are made an integral part of regular Board Agendas along with background reports furnished by Staff members. As justified by circumstances, the Board enters into conferences with committees of black and white citizens preliminary to taking formal action in official Board Meetings. It is the practice of the Superintendent and all central office Staff members to meet with committees, black and white parents, representing the several school communities in Mobile County to exchange information and ideas which are mutually helpful in improving public education in Mobile County. Such conferences serve a wide variety of needs. Many important problems are resolved in such conferences, thus reducing the number of conferences in which Board members are expected to participate.

Attached hereto, labeled Attachment J, is a copy of a School Board policy entitled "Parent and Student Griev-

ances." This policy reflects the philosophy of the Board and the philosophy of its Administrative Staff. This policy endorses and encourages the democratic involvement of all parents and students in making public education what it ought to be.

There are no negro members of the School Board, however the Board has no control over this. By law, the members of the Board are elected by the citizens of the County in a general election, in the same manner as all other public office holders in the state. There is no racial restriction upon who may offer for election to the Board. Negroes have offered themselves as candidates for election to the Board on more than one occasion, and one is running in the Democratic Primary at this time, but as yet none have been elected.

(6) In response to question number (6) of the Order I make the following comments:

All extracurricular activities, including sports, over which the School Board has control, are being operated on a non-segregated basis throughout the system.

All athletic teams at every school are open to every student, regardless of race. Participation by minority race students, particularly by negro students at traditionally white schools, has been substantial. For example, several predominantly white high schools this year fielded bi-racial basketball teams with more negro players than white.

There is also cross scheduling between traditionally negro schools and traditionally white schools in all major sports, i.e., football, basketball, baseball and track, during regular season play; and all tournament and play-off competitions are open to and regularly participated in by all

schools on the same basis, without regard to the former or current racial composition of the schools. Again, basketball is an example. Historically, there had been two district or regional play-off tournaments, one for traditionally negro schools and another for traditionally white schools. Now, and for the past two years, there is only one tournament for all teams, and all schools participate.

The same situation pertains to all other extra-curricular activities over which the School Board has control, such as bands and other musical groups, R.O.T.C. units, speech and other academically related competitions, school related social events, parent related activities such as Parent, Teacher Associations and spectator events.

(7) In response to question number (7) of the Order I make the following comments:

All facilities are being operated on a non-segregated basis.

There is no separation of students within individual schools by race, by sex, by class, by tracts, or on any basis, other than of course the normal division of students into grades.

All facilities are made available to all schools in the system without regard to the present or past racial composition of the schools.

Within each individual school of the system, all facilities are made available to all students, regardless of race, on an equal basis.

This includes not only facilities in the strict sense, such as restrooms, lunch rooms, class rooms, laboratories, gymnasiums, libraries, playing fields, and etc.; but also, all services, activities and programs such as bands, orchestras,

choral groups, clubs, counseling services, student governments, honor societies, publication staffs, intramural sports, assemblies, class elections and honors, parties and social activities; and every other facility, activity and program of every school.

It is also significant that no services, facilities, activities or programs have been changed, curtailed or limited due to the race of students; and no special waiting periods or other qualifying factors or circumstances have been attached as a qualification to participation, due to the race of any student.

All schools are treated equally, without regard to past or present racial composition of the school, with regard to the allocation of instructional materials, athletic equipment, facilities, equipment, furnishings, supplies, textbooks and allocated funds; and courses of instruction are offered on the same basis.

The statements above not only reflect the current situation, but are accurately reflective of the situation since 1967.

Not only are all facilities, services, activities and programs *available* to every student without regard to race, and *operated* on a non-segregated basis, but *actual participation* by minority race students is substantial. This progress is a compliment to both the white and negro students who engage in the various activities and programs and to the teachers and administrators responsible for the organization and supervision of these activities and programs. The progress has been so great that there is now no apparent evidence that any minority race student is excluded from any service, facility, program or activity,

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except on the basis of his or her ability to meet the normal criteria established for participation by anyone.

It is not only the increase in the number of negro students now participating in activities in traditionally white schools that is significant, but the degree to which the white students have accepted the negro students into such activities.

(8) In response to question number (8) of the Order I make the following comments:

Yes, the School Board is in compliance with this requirement.

Regarding construction and site selection, because of the uncertainty surrounding what will be required of a school board from time to time during the desegregation process, the Board's building program has been at a total standstill for over two years. No schools have been constructed and no school sites selected during this time. The last schools constructed in the system were Dodge and Adams in 1967 and Grand Bay in 1968. Dodge and Adams opened their doors for the first time in September 1967, both as fully integrated schools. The current enrollment at Dodge is 65 negro and 675 white. The current enrollment at Adams is 311 negro and 686 white. Grand Bay first opened in September 1968. The current enrollment at Grand Bay is 146 negro and 630 white.

Regarding school consolidation, there have been a number of consolidations, some proposed voluntarily by the School Board and some required by the District Court, within the past three years. Each has resulted in a significant increase in the extent of integration. Some of these are:

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1. Closing of the all negro Emerson Elementary School and distribution of its students to adjacent schools, one of which is traditionally negro and one traditionally white.

2. Closing of the all negro Robert Thompson School and consolidation of its students into the otherwise all white Wilmer School.

3. Closing of the all negro Cottage Hill Elementary School and the distribution of its students to the otherwise white Fonde, Shepard and Dodge Elementary Schools.

4. Consolidation of the all white Citronelle and all negro Rosa Lott Schools, resulting in the following current enrollments: Citronelle, 800 white and 400 negro; Rosa Lott, 465 white and 145 negro.

5. Conversion of the all white Augusta Evans School to a school for special students that has a current enrollment of 54 white and 87 negro, and a faculty of 8 negro and 8 white.

6. Closing of the traditionally white Arlington Elementary School and the distribution of its students to surrounding schools, some of which are predominantly white, and some of which are predominantly negro.

7. Closing of the all negro Warren Elementary School and distribution of its students to the predominantly white Crichton Elementary School and other schools, predominantly negro.

8. Closing of the all negro Barney School resulting in distribution of its students to surrounding schools, some predominantly white and some predominantly negro.

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9. Consolidation of the all negro Belsaw and the all white Mount Vernon Schools, resulting in integration of both schools.

10. Consolidation of the all negro St. Elmo and all white Theodore Schools, resulting in the following current enrollments: St. Elmo 436 white, 54 negro; Theodore 1466 white and 335 negro.

11. Consolidation of the all negro Burroughs, all negro Dixon and all negro Dawes Union Schools with the all white Griggs and all white Davis Schools, resulting in:

(a) Closing of the all negro Dawes Union School

(b) Integration of the other four schools producing the following current enrollments:

Burroughs	—	192 white, 290 negro;
Griggs	—	865 white, 41 negro;
Davis	—	591 white, 178 negro;
Dixon	—	249 white, 189 negro.

Regarding the location of temporary or portable classrooms, the Board follows a policy of locating these solely on the basis of and for the purpose of providing the facilities necessary to accommodate the students assigned to the various schools by the terms of the various orders of the District Court itself.

(9) In response to question number (9) of the Order I make the following comments:

By Order dated February 4, 1970, the District Court directed the School Board to put into operation a majority

to minority transfer policy, whereby any student attending a school in which his race is in the majority can, for that reason alone, transfer to another school where his race is in the minority, space being available.

On February 5, 1970 the School Board authorized and instructed the Superintendent and Staff to comply fully with this Order as well as the District Court Decree of January 31, 1970 that it amended. Based upon this instruction the Superintendent and Staff have included the majority to minority transfer provision as a part of the overall transfer policy, all the rest of which was specified by previous court orders.

This entire transfer policy, including the majority to minority transfer provision, is applied uniformly throughout the system.

(2) In response to question number (2) of the Order I make the following comments:

(a) As required by question 2 (a), I have attached hereto, labeled Attachment F, a statistical table setting out by race the anticipated enrollment at every school *affected* by the recommended plan submitted by the School Board on December 1, 1969. This plan concerned *only* the schools lying *east* of Interstate Highway 65; consequently, the statistical table covers only those schools, plus Davidson High School which lies west of Interstate Highway 65, but was also affected.

(b) Answering question 2 (b), I refer now to the original HEW recommended plan filed in the District Court in July 1969.

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The District Court Decree of August 1, 1969 set out a desegregation plan which essentially adopted this HEW recommended plan in all of the schools of the system, *except* those lying *east* of Interstate Highway 65; and this court ordered plan has been implemented in good faith during the 1969-70 school year, fully desegregating all of the system *except* that part *east* of Interstate Highway 65.

With reference to this original HEW plan as it concerns the area now in controversy, i.e., that part of the system and the schools lying *east* of Interstate Highway 65, I would make the following observations and comments.

The original HEW plan, as it relates to the schools east of Interstate Highway 65 reappears identically as Plan B submitted by HEW to the District Court on December 1, 1969. Attached hereto, labeled Attachment G, is the supporting statistical table taken directly from the HEW report filed in the District Court. This table was not prepared by our professional personnel; it was lifted in-toto from the HEW report. I cannot confirm the accuracy of this table, statistically or otherwise. Indeed, examination of the table, as well as the recommended plan it relates to, by our professional staff indicates that it is substantially inaccurate; and further indicates that because of this inaccuracy, any desegregation plan based upon it would be essentially impossible of implementation to begin with.

The statistical data upon which the plan is based is outdated and inaccurate. The original statistical data was gathered and compiled in September 1968. It is now totally inaccurate. Spot checks made of this statistical information, after the HEW plan was filed on December 1, 1969, to determine its accuracy and relevancy indicate that in

a number of instances such figures as the total number of students living in a given area (an attendance zone, or a part of an attendance zone), or the ratio of black students to white or vice versa, are in error by as much as 50%.

In addition to this basic inaccuracy due to obsolescence, HEW apparently made a number of errors in working with the basic statistical data in preparation of its Plans. One example should suffice. The HEW Plan B, according to HEW figures (Attachment G) contemplates an enrollment of 550 at Prichard Junior High School which has a capacity of 609; whereas accurate current statistics indicate that in the zone Plan B would assign to the school there are actually 1421 students who must attend the school. This means that in Plan B HEW has actually assigned 1421 students to a school with a capacity of 609. There are other similar examples. Such an arrangement is simply impossible of implementation.

The plan contemplates, and therefore would require, the utilization of a substantial amount of transportation or bussing, beyond the capacity and capability of the school system's transportation system.

The plan contemplates the closing and non-operation of certain school facilities. The inaccurate statistics on which HEW bases these steps perhaps may indicate such action is justified, but accurate current statistics and projections for the future indicate that these steps cannot be taken.

The plan, as a consequence of its author's total lack of any knowledge of virtually all practical functional factors about the school system and the City of Mobile, is based upon the assignment of many children to schools where they simply cannot as a practical matter attend because

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they simply cannot get to the schools. I have reference to such factors as accessibility; traffic flow patterns; the routes of city and other commercial bus transportation; safety hazards such as railroad tracks, major thoroughfares, business and industrial areas, narrow streets without sidewalks, and other dangerous areas; and absolute barriers such as rivers, streams and interstate highways with only limited crossing places.

In addition to those factors above which make the HEW Plan B simply functionally unworkable, there are many features of the plan which, while workable after a fashion, are educationally unsound. Some of these features are:

Grade Structure in the junior high and senior high schools is totally unstable. There are eight different structures: 6-9, 7-8, 6-7, 8 only, 7-12, 9-12, 10-12, and 12 only. Within these structures are seven two grade schools and three schools of only one grade each. Such an arrangement is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend it unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

Several school plants are designated for a use for which they were not constructed and to which they cannot be satisfactorily adopted; such as using the elementary school buildings for junior high schools (Woodcock, Fonville) and high schools (Bienville, Craighead) junior high school buildings for senior high schools (Carver) and senior high school buildings for junior high schools (Mobile County Training School, Central).

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The plan calls for the creation of several so called school complexes, by grouping two, three or even four separate schools together, even though physically they may be widely separated, and treating them as one large school. For example: (a) the Vigor, Blount, Carver, Bienville High School Complex; (b) the Phillips, Washington, Fonville Junior High School Complex; (c) the Eanes, Woodcock Junior High School Complex and (d) the Williamson, Craighead High School Complex. These complexes present many administrative difficulties and other serious problems such as unadaptability of facilities (using Craighead Elementary School as half of a high school complex) and the simple inability of students to get to the schools to which they are assigned.

The plan makes the implementation of adequate curriculum impossible in a number of schools; makes it impossible to conduct many extra curricular activities; and destroys the very important factor of student and parent identification with the neighborhood school as a center of activity. The plan virtually destroys the neighborhood school concept.

The Plan requires the cross town bussing of many *elementary school* students thereby forcing the *very young* children to attend schools far removed from their own neighborhoods, in unfamiliar surroundings where they inevitably experience insecurity.

The basic killing defect in the original HEW proposal, as brought forward in HEW Plan B on December 1, 1969, is the fact that it is simply statistically inaccurate to the extent that it could not be implemented.

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(c) In answer to question 2 (c), I refer now to HEW Plan B-Alternative filed in the District Court on December 1, 1969. This plan also concerns only the schools lying east of Interstate Highway 65. Attached hereto, labeled Attachment H, is the supporting statistical table taken directly from the HEW report filed in the court. This table was not prepared by our professional personnel; it was lifted in-toto from the HEW report. I cannot confirm the accuracy of this table, statistically or otherwise. Indeed, examination of the table, as well as the recommended plan it relates to, by our professional staff indicates that it is substantially inaccurate; and further indicates that any desegregation plan based upon it would be essentially impossible of implementation to begin with.

Plan B-Alternative generally contains the same defects and is subject to the same criticisms as Plan B previously referred to. In addition, upon close examination of the statistical data set out in the plan and a comparison of this data with accurate current data, it is immediately apparent that the statistical data is so grossly inaccurate as to make the plan totally unworkable. These examples will suffice to illustrate the point.

The junior high and senior high zones set up by Plan B-Alternative are the same zones as were recommended by HEW in its previous report of July, 1969, and are reflected in maps attached to that report. The statistical data set out by HEW in Plan B-Alternative, (Attachment H) as well as on the corresponding maps, indicates a total of 1744 students in the zone drawn for Eanes-Woodcock Junior High School Complex (grades 6-9). On the other hand, a current analysis by our pupil personnel division

indicates there are actually approximately 2693 students in the zone in grades 6-9. This is an error of over 900 students in the HEW figures. Consider this in light of the fact that the normal capacity of the school is 1760 students and the fatal absurdity of the HEW error becomes apparent.

In a similar manner, the HEW statistics in Plan B-Alternative (Attachment H) indicate a total of 1291 students in the Mobile County Training School zone, (in grades 6-7). Whereas, a current statistical analysis indicates that there are actually only approximately 362 such students in the zone. This is an error of over 900 students.

In a similar manner Plan B-Alternative purports by the HEW statistics (Attachment H) to assign 2602 students to the Phillips-Washington-Fonville Complex; whereas, in the zone drawn in the plan there are actually approximately 3253 students who must attend the complex. This is an error of over 650 students.

In a similar manner Plan B-Alternative purports by the HEW statistics (Attachment H) to assign 2606 students to the Dunbar-Central Complex, while in actuality there are only 2214 students in the zone drawn in the plan; an error of almost 400 students. These same errors are also found in Plan B, as well as in Plan B-Alternative. Because of these gross statistical errors, Plan B-Alternative simply could not be implemented.

I would direct the following comments to both HEW Plan B and HEW Plan B-Alternative.

The original HEW *Report* was hurriedly prepared by one Dr. Joe Hall, who had no prior contact with or knowledge of Mobile or the Mobile County Public School System. Between June 16, 1969 when he first established a working

relationship with me, and July 7, 1969 when the *Report* was filed with the court (a total of 21 days) he prepared the original *Report* of 109 pages. Well over half of these pages were devoted to a detailed discussion of typical "Chamber of Commerce" information, totally irrelevant to desegregation of the school system. For example, the report explains that among Mobile's major industries are cement, naval stores, ship repair, etc; and its modern ocean terminal can handle 32 vessels simultaneously; and in 1965 unemployment in Mobile County totaled 4.3 per cent of the civilian "at place" labor force; and on and on it goes with reams of worthless information.

Dr. Hall's testimony was taken by deposition at which time he revealed that the actual desegregation *Plan* contained in the Report was prepared not by himself, but by one Dr. Stolee of Miami, Florida and one Dr. Weinkoff of South Carolina; both of whom had never been to Mobile before; both of whom had no prior contact with or information about Mobile or its school system; both of whom arrived in Mobile one day and departed the next, and prepared the plan during the short time of less than 48 hours. In view of these circumstances it is not surprising that the plan contains numerous statistical inaccuracies and other practical impossibilities.

The HEW Report on December 1, setting out both Plan B and Plan B-Alternative was prepared by one Ernest S. Bunch, who styles himself Acting Senior Program Officer, Equal Educational Opportunities. I talked with Mr. Bunch on several occasions although he never asked me for information, advice or assistance. My first contact with Mr. Bunch was on November 17, 1969 very shortly after his arrival in Mobile. Prior to coming to Mobile on that occa-

sion he had no prior contact with Mobile or the Mobile County Public School System.

Based upon my discussions with Mr. Bunch and my subsequent review of the HEW Plan he prepared I am convinced beyond any doubt that he had only a very superficial knowledge of Mobile and the Mobile County Public School System. He obviously has no knowledge whatsoever of many, many factors, the thorough knowledge of which would be essential to anyone who would attempt to formulate a comprehensive plan or system of student assignment with the object and expectation that it should be educationally sound, administratively feasible or, indeed, practically workable. As a result, the HEW Plan of December 1 that he has formulated, is in its entirety, as well as in its various parts or segments, educationally unsound, administratively infeasible and simply will not work. It disregards and will be detrimental to the best interests of the children concerned, black and white alike, and would be destructive to the school system.

The HEW Plan is really four different plans which Mr. Bunch labeled Plan A, *Plan B, Plan B-Alternative,* and Plan B-I-Alternative. Neither of the four plans is based upon original information, study, statistics or research, because Mr. Bunch made no study, conducted no research and gathered no statistics or information. This in fact is conceded in the explanatory preface contained in the plan itself. All Mr. Bunch did was to take statistical data from the previous HEW report of July 1969, and then rearranged schools and students by juggling statistics in several different ways to come up with his various alternative Plans.

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A further important factor not accounted for in the HEW plans, and apparently not even considered, is the financial factor. Implementation of the HEW plans would result in the following costs and expenses to the school system, according to a study made by the professional personnel of the Business Affairs Division:

1. Cost of additions to and conversion of school plant facilities in order to meet changes of use and changes of enrollment required in the HEW plans, $10,495,200.00.

2. Loss of value of buildings and sites to be closed and abandoned, or at least not used, according to requirements of the HEW plans, $2,145,900.00.

3. Acquisition cost of new busses in order to meet the additional transportation required by the various HEW plans:

Plan B	— $321,457.37	(59 busses)
Plan B-Alternative	— $206,932.74	(38 busses)

4. Recurring yearly expense, for operating each year the additional busses required to meet the additional transportation required by the various HEW Plans:

Plan B	— $ 92,700.80	(59 busses)
Plan B-Alternative	— $ 59,705.60	(38 busses)

The school system simply does not have the capability of meeting these increased costs and expenses, whether it be a matter of immediate or future cash outlay, or the absorption of loss due to the closing of facilities.

The HEW plans apparently make no provision whatsoever for special classes to accommodate the several hun-

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dred exceptional (slow, retarded, handicapped, etc.) students in the system who require special classes, teachers, and arrangements. This is most unfortunate.

The HEW plans are totally devoid of any consideration for the future. As far as I have been able to determine from examination and study of the HEW plans, the services of the Mobile Housing Board and the City Planning Commission were not utilized or considered in developing either of the three alternative plans. The original source material from which the plans were developed was prepared by HEW representative Dr. Joe Hall in connection with his previous report of July 1969. In his deposition testimony Dr. Hall admitted that these agencies were not consulted. As a result, expected residential growth in the area in question is not allowed for in the HEW plans; on the contrary, rather than allowing for anticipated growth, the HEW plans would unwisely close schools in this area.

After a close and careful study of Plan B and Plan B-Alternative, it is my firm opinion that both of these plans as submitted to the court are educationally unsound and administratively infeasible; and that they are based upon statistical data which is to a large extent inaccurate, or at least inaccurately stated in the plans, so that the plans are incapable of effective implementation.

Dated at Mobile, Alabama on the 10th day of April, 1970.

/s/ James A. McPherson
James A. McPherson

Subscribed and sworn to before me on the 10th day of April, 1970.

/s/ Eloise W. Harrison
Notary Public

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ATTACHMENT A

(See opposite) ☞

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Filed on April 10, 1970

ATTACHMENT A

ENROLLMENT REPORT
MOBILE COUNTY PUBLIC SCHOOLS
(Actual Net Enrollment - Sept. 26, 1969)

ALL SCHOOLS EXCEPT THOSE REFERRED TO IN THE
AUG. 1, 1969 COURT ORDER AS BEING EAST OF INTERSTATE-65

SCHOOLS	GRADE	STUDENTS		
		WHITE	NEGRO	TOTAL
Adams	1- 7	686	311	997
Alba	1-12	1514	194	1708
Austin	1- 6	396	22	418
Azalea Road	7- 8	1039	38	1077
Baker	1-12	969	97	1066
Belsaw	6- 8	21	207	228
Burroughs	1- 6	192	290	482
Calcedeaver	1- 6	159		159
Child Guidance	SPEC.	64	20	84
Citronelle	6-12	800	400	1200
Davis	1- 6	591	178	769
Dickson	1- 6	835	193	1028
Dixon	1- 6	249	189	438
Dodge	1- 6	675	65	740
Eight Mile	1- 8	586	110	696
Evans	SPEC.	54	87	141
Fonde	1- 6	679	11	690
Forest Hill	1- 5	560		560
Grand Bay	1- 6	630	146	776
Griggs	1- 6	865	41	906
Hillsdale	6- 8	431	217	648
Hollinger's Island	1- 6	394	2	396
Indian Springs	1- 6	520	12	532
Lee	1- 5	469	119	588

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SCHOOLS	GRADE	STUDENTS WHITE	STUDENTS NEGRO	TOTAL
Lott	1- 5	465	145	61[illegible]
Mobile County High	7-12	602	251	85[illegible]
Mount Vernon	1- 5	84	358	44[illegible]
Orchard	1- 5	754	113	86[illegible]
Saint Elmo	7- 8	436	54	49[illegible]
Saraland	1- 5	661	33	69[illegible]
Satsuma	8-12	1150	267	141[illegible]
Scarborough	6- 8	638	77	71[illegible]
Semmes	1- 8	988	25	101[illegible]
Shaw	9-12	1242	237	147[illegible]
Shepard	1- 6	409	29	43[illegible]
Tanner Williams	1- 6	340	9	34[illegible]
Theodore	7-12	1466	335	180[illegible]
Thomas	1- 6	222	101	32[illegible]
Whistler	1- 6	227	231	45[illegible]
Will	1- 5	657	175	83[illegible]
Wilmer	1- 6	333	59	39[illegible]

[Attachment B Omitted—Same as School Board Report Filed November 26, 1969, *supra*, p. 518a.]

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ATTACHMENT C

ENROLLMENT REPORT
MOBILE COUNTY PUBLIC SCHOOLS
ESTIMATED ASSIGNMENT OF STUDENTS AS OF JAN. 31, 1970

LIST OF SCHOOLS AFFECTED BY THE DISTRICT COURT ORDER OF JAN. 31, 1970

(Those schools lying East of Interstate-65 plus Davidson which lies West of Interstate-65 but was also affected.)

		STUDENTS		
SCHOOLS	GRADE	WHITE	NEGRO	TOTAL
Bienville	1- 6	288	313	601
Blount	9-12	8	1935	1943
Brazier	1- 5		955	955
Brookley	1- 6	484	76	560
Caldwell	1- 6	20	390	410
Carver	6- 8	1	899	900
Central	9-12		1233	1233
Chickasaw	1- 6	495	3	498
Clark	7- 9	1080	290	1370
Council	1- 5	2	548	550
Craighead	1- 5	290	569	859
Crichton	1- 6	457	240	697
Davidson	9-12	2296	72	2368
Dunbar	7- 8	5	738	743
Eanes	6- 8	953	252	1205
Fonvielle	1- 6	4	1163	1167
Glendale	1- 5	385	192	577
Gorgas	1- 6	4	1168	1172
Grant	1- 5		1231	1231
Hall	6- 8	180	838	1018
Hamilton	1- 6	622		622
Howard	1- 6	12	432	444
Leinkauf	1- 5	224	235	459

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SCHOOLS	GRADE	STUDENTS WHITE	STUDENTS NEGRO	
Maryvale	1- 5	453	171	
Mertz	1- 5	450		
Mobile County Training	6-12	57	1125	
Morningside	1- 5	631		
Murphy	9-12	2356	516	
Old Shell Road	1- 6	267	106	
Owens	1- 6		1121	
Palmer	1- 5	66	600	
Phillips	7- 8	691	179	
Prichard	6- 8	299	201	
Rain	7-12	1089	112	
Robbins	1- 5		859	
Stanton Road	1- 6	6	976	
Toulminville	10-12		1125	
Trinity Gardens	6- 8		879	
Vigor	9-12	1447	439	
Washington	7- 9		1463	
Westlawn	1- 6	451		
Whitley	1- 5		383	
Williams	1- 6	554	60	
Williamson	9-12	605	408	
Woodcock	1- 5	193	186	

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—3—

United States District Court for the Southern District of Alabama on March 12, 1970 ordered some additional changes that will affect the Estimated Enrollments as of January 31, 1970. These changes and results are as follows:

1. The attendance zone boundary line between Westlawn and Mertz Elementary Schools was relocated back on the same streets as ordered by the Court on August 1, 1969.

   As a result of this change, Westlawn increased by approximately 90 white students and decreased Mertz by approximately 70 white students and Mae Eanes by approximately 20 white students.

2. Mertz Elementary School will maintain a sixth grade for the remainder of the 1969-70 school year.

   As a result of this change, Mertz increased by approximately 73 white students and decreased Eanes by approximately 73 white students.

3. Morningside Elementary School will maintain a sixth grade for the remainder of the 1969-70 school year.

   As a result of this change, Morningside increased by approximately 121 white students and decreased Eanes by approximately 121 white students.

4. Trinity Gardens School will maintain a twelfth grade for the remainder of the 1969-70 school year.

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As a result of this change, Trinity Gardens increased by approximately 117 Negro students and Blount decreased by approximately 117 Negro students.

5. Mae Eanes Middle School will maintain a ninth grade for the remainder of the 1969-70 school year.

As a result of this change, Mae Eanes increased by approximately 28 Negro students and 239 white students. Murphy High School decreased by approximately 3 Negro students and 16 white students. Williamson High School decreased by approximately 25 Negro students and 123 white students.

All graduating seniors were permitted to continue to attend the school where they had been enrolled for the remainder of the 1969-70 school year. A substantial number of senior students would have been assigned across racial lines on March 20, 1970 except for this immunity granted by Court Order. This immunity will no longer be in effect after the end of this school year.

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ATTACHMENT D-1

SCHOOLS	MARCH 20 TOTAL	MARCH 23 - TOTAL NEGRO	WHITE	TOTAL	NUMBER OF NON-CONFORMISTS
Blenville	621	329	300	629	
Blount	1741	1948		1948	
Brazier	799	808		808	
Brookley	580	79	501	580	
Caldwell	381	375	20	395	
Carver	863	920		920	
Central	1240	1254		1254	
Chickasaw	500		500	500	
Clark	1356	267	1071	1338	
Council	532	543	2	545	
Craighead	836	560	286	846	
Crichton	714	260	460	720	
Davidson	2415	73	2363	2436	15
Dunbar	805	806	4	810	
Eames	1265	283	994	1277	
Fonvielle	1179	1179	3	1182	
Glendale	583	188	402	590	
Gorgas	1171	1171	2	1173	
Grant	1272	1275	1	1276	
Hall	869	817	137	954	
Hamilton	582		586	586	3
Howard	404	410	8	418	
Leinkauf	421	279	176	455	
Maryvale	640	167	479	646	
Mertz	437		438	438	
Mobile County Trng.	1184	1188	2	1190	
Morningside	748		749	749	
Murphy	2682	490	2247	2737	6
Old Shell Road	373	110	269	379	
Owens	1308	1328		1328	
Palmer	678	610	65	675	
Phillips	885	176	710	886	
Prichard	514	209	308	517	
Rain	1218	116	1106	1222	
Robbins	847	841	9	850	
Shaw	1400	220	1179	1399	
Stanton Road	987	984	1	985	
Toulminville	1091	1097		1097	
Trinity Gardens	946	964		964	
Vigor	1934	480	1474	1954	
Washington	1452	1462		1462	
Westlawn	508		507	507	
Whitley	386	388		388	
Williams	616	56	562	618	
Williamson	727	625	90	715	
Woodcock	386	203	191	394	
TOTALS	43076	25538	18202	43740	24

Affidavit of James A. McPherson,
Filed on April 10, 1970

NUMBER OF STUDENTS WHO HAVE NOT REPORTED TO ASSIGNED SCHOOL

Bienville - 1	(March 23)
Clark - 7	(March 23)
Davidson - 11	(March 23)
Prichard - 1	(March 23)
Williamson - 200	(March 23)
Woodcock - 1	(March 23)

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT D-2

ENROLLMENT MARCH 25, 1970

	N	W	T
Bienville	329	300	629
Blount	1755		1755
Brazier	941		941
Brookley	79	501	580
Caldwell	376	20	396
Carver	896	1	897
Central	1268		1268
Chickasaw		498	498
Clark	276	1073	1379
Council	548	2	550
Craighead	594	270	864
Crichton	262	463	745
Davidson	74	2377	2451
Dunbar	812	4	816
Eanes	287	990	1277
Fonvielle	1174	3	1177
Glendale	189	404	593
Gorgas	1172	2	1174
Grant	1274	1	1275
Hall	792	179	971
Hamilton		592	592
Howard	410	4	414
Leinkauf	281	183	464
Maryvale	170	476	646
Mertz		438	438

Affidavit of James A. McPherson,
Filed on April 10, 1970

	N	W	T
Mobile Co. Trng.	1188	2	1190
Morningside		750	750
Murphy	509	2278	2787
Old Shell Road	119	269	388
Owens	1341		1341
Palmer	613	70	683
Phillips	176	708	884
Prichard	210	311	521
Rain	116	1122	1238
Robbins	841	9	850
Shaw	220	1181	1401
Stanton Road	984	1	985
Toulminville	1099		1099
Trinity Gdns.	972		972
Vigor	473	1470	1943
Washington	1465		1465
Westlawn		507	507
Whitley	388		388
Williams	47	572	619
Williamson	612	68	680
Woodcock	204	191	395

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT D-3

ENROLLMENT—MARCH 30, 1970

	N	W	T
Bienville	332	292	624
Blount	1761		1761
Brazier	945		945
Brookley	79	501	580
Caldwell	376	20	396
Carver	911	1	912
Central	1280		1280
Chickasaw		498	498
Clark	272	1072	1344
Council	547	2	549
Craighead	576	280	856
Crichton	262	458	720
Davidson	74	2383	2457
Dunbar	812	4	816
Eanes	282	993	1275
Fonvielle	1125	3	1128
Glendale	189	409	598
Gorgas	1172	2	1174
Grant	1274	1	1275
Hall	780	152	932
Hamilton		592	592
Howard	410	3	413
Leinkauf	280	185	465
Maryvale	172	480	652
Mertz		438	438

Affidavit of James A. McPherson,
Filed on April 10, 1970

	N	W	T
Mobile Co. Trng.	1192	2	1194
Morningside		751	751
Murphy	513	2300	2813
Old Shell Rd.	112	282	394
Owens	1343		1343
Palmer	613	72	685
Phillips	176	711	887
Prichard	211	310	521
Rain	116	1125	1241
Robbins	837	9	846
Shaw	220	1182	1402
Stanton Rd.	987		987
Toulminville	1101		1101
Trinity Gdns.	986		986
Vigor	474	1480	1954
Washington	1461		1461
Westlawn		507	507
Whitley	388		388
Williams	47	572	619
Williamson	618	65	683
Woodcock	206	180	386
	25,562	18,317	43,879

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT E

[illegible] COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 19[illegible]

School	Principal		Asst. Principal		Teachers		Total Professional	
	W	N-W	W	N-W	W	N-W	W	N-W
Adams		1	1		21	16	22	17
Alba	1		1		54	11	56	11
Austin	1				10	3	11	3
Avalon Road	1		1		36	5	38	5
Baker	1		1		37	4	39	4
Belsaw		1			2	7	2	8
Blauville	1				11	7	12	7
Blount		1		1	8	69	8	71
Braxton		1			4	25	4	26
Brookley	1				15	3	16	3
Burroughs		1			10	6	10	7
Calcedeaver	1				3	2	4	2
Caldwell		1			3	11	3	12
Carver		1		1	2	34	2	36
Central		1		1	5	50	5	52
Chickasaw	1				11	3	12	3
Child Guidance					15	2	15	2
Citronelle	1		1		33	16	35	16
Clark	1		1		45	5	47	5
Council		1			3	11	3	12
Craighead	1				14	12	15	12
Crichton	1				19	4	20	4
Davidson	1		2		87	10	90	10
Davis	1				20	4	21	4
Dauphin Island					2		2	
Dickson	1				23	8	24	8

[illegible]: W - White
N-W = Non White

Affidavit of James A. McPherson, Filed on April 10, 1970

[illegible] COUNTY PUBLIC SCHOOLS - [illegible] BY RACE AS OF APRIL [illegible]

School	Principal W	Principal N-W	Asst. Principal W	Asst. Principal N-W	Teachers W	Teachers N-W	Total Professional W	Total Professional
Bimm		1			8	5	8	
Dodge	1				17	4	18	
Dunbar		1		1	2	31	2	
Hanco	1		1		35	7	37	
Eight Mile	1				20	5	21	
Evans	1				8	8	9	
Fonde	1				18	2	19	
Fonvielle		1			1	37	1	
Forest Hill	1				14	3	15	
Glendale	1				13	4	14	
Gorgas		1			1	33	1	
Grand Bay	1				19	5	20	
Grant		1			3	37	3	
Griggs	1				21	5	22	
Hall	1			1	12	16	13	
Hamilton	1				15	4	16	
Hillsdale		1	1		16	11	17	
Hollingers Island	1				9	3	10	
Howard		1			1	12	1	
Indian Springs	1				14	2	15	
Lee	1				16	2	17	
Leinkauf	1				9	4	10	
Lott		1			12	8	12	
Maryvale	1				12	8	13	
Morts	1				12	2	13	
Mobile County High	1		1		27	5	29	

Key: W = White
N-W = Non White

Affidavit of James A. McPherson, Filed on April 10, 1970

MOBILE COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 1970

School	Principal		Asst. Principal		Teachers		Total Professional	
	W	N-W	W	N-W	W	N-W	W	N-W
Mobile County Training		1		1	6	46	6	48
Montgomery	1		1		30	4	32	4
Morningside	1				20	2	21	2
Mt. Vernon	1				5	8	6	8
Murphy	1		3		102	12	106	12
Old Shell	1				9	2	10	2
Orchard	1				21	5	22	5
Owens		1			2	39	2	40
Palmer		1			1	20	1	21
Phillips	1			1	34	3	35	4
Prichard	1			1	16	6	17	7
Rain	1		1		45	7	47	7
Robbins		1			2	23	2	24
Scraland	1				19	2	20	2
Setsuna	1		1		45	11	47	11
Scarborough	1		1		27	3	29	3
Semmes	1		1		33	4	35	4
Shaw	1		1		53	5	55	5
Shepard	1				12	2	13	2
Stanton Road		1			2	27	2	28
St. Elmo		1	1		11	9	12	10
Tanner-Williams	1				8	3	9	3
Theodore	1		1		65	6	67	6
Thomas	1				7	3	8	3
Toulminville		1		1	6	37	6	39
Trinity Gardens		1		1	3	36	3	38

Key: W - White

Affidavit of James A. McPherson,
Filed on April 10, 1970

MOBILE COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 19

School	Principal		Asst. Principal		Teachers		Total Professi	
	W	N-W	W	N-W	W	N-W	W	
Vigor	1		1		62	19	64	1
Washington		1		1	2	54	2	5
Westlawn	1				13	3	14	1
Whistler	1				13	5	14	1
Whitley		1			3	10	3	1
Will	1				19	6	20	1
Williams	1				14	4	15	1
Williamson		1	1		5	34	6	3
Wilmer	1				10	3	11	1
Woodcock	1				7	5	8	1
TOTALS	58	28	24	11	1560	1059	1642	109

Key: W = White

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT F

STATISTICAL TABLE FOR PROPOSED
ELEMENTARY ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Chickasaw	1 - 6		500	500
Hamilton	1 - 6		625	625
Bienville	1 - 6	313	300	613
Glendale	1 - 5	206	444	650
Whitley	1 - 5	421		421
Palmer	1 - 5	660	60	720
Robbins	1 - 5	805	2	807
Grant	1 - 5	1250	15	1265
Brazier	1 - 5	983		983
Gorgas	1 - 6	1150	8	1158
Stanton Road	1 - 6	1077	14	1091
Fonvielle	1 - 6	1153	8	1161
Old Shell Road	1 - 6	120	250	370
Crichton	1 - 6	243	518	761
Westlawn	1 - 6		483	483
Owens	1 - 6	1237		1237
Caldwell	1 - 6	401	13	414
Howard	1 - 6	465	21	486
Emerson	1 - 6	340	16	356
Council	1 - 5	525	6	531
Leinkauf	1 - 5	96	258	354
Craighead	1 - 5	512	383	895
Hall	SEE MIDDLE SCHOOLS			
Woodcock	1 - 5	170	249	439
Arlington	- -	- -	- -	-
Maryvale	1 - 5	130	478	608
Herta	1 - 5		496	496

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
ELEMENTARY ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Morningside	1 - 5		631	631
Williams	1 - 6	43	571	614
Brookley	1 - 6	71	502	573

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
MIDDLE SCHOOL ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Clark	7 - 9	278	1242	1520
Trinity Gardens	6 - 8	992		992
Carver	6 - 8	867	8	875
Prichard	6 - 8	167	340	507
Mobile County Training	6 - 8	543	3	546
Washington	7 - 9	1559	16	1575
Dunbar	7 - 8	912	6	918
Eanes	6 - 8	160	911	1071
Hall	6 - 8	573	182	755
Phillips	7 - 8	171	861	1032
Rain	7 - 8	38	415	453

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
SENIOR HIGH ATTENDANCE AREAS
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Vigor	9-12	468	1296	1764
Blount	9-12	1875	22	1897
Mobile County Training	9-12	634	99	733
Central	9-12	1372	17	1389
Toulminville	10-12	1145	20	1165
Murphy	9-12	425	2171	2596
Williamson	9-12	474	762	1236
Rain	9-12	59	735	794
Shaw	9-12	240	1250	1490
Davidson	9-12	70	2150	2220

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT G

HEW PLAN - ORIGINAL

Information taken from a report
filed with the Court by HEW Officials

Elementary Schools	Grade	Students		
		White	Negro	Total
South Brookley	1-6	514	72	586
Morningside	1-6	756	0	756
Williams	1-6	513	43	556
Maryvale	1-6	588	30	618
Hertz	1-6	482	0	482
Hartlawn	1-6	595	0	595
Woodcock	1-6	380	80	460
[illegible]	1-6	3	701	704
Arlington	1-5	384	153	537
Council	1-5	0	560	560
Emerson	1-6	3	518	521
Leinkauf	1-6	323	125	448
Owens	1-6	0	1254	1254
Caldwell	1-6	1	401	402
Howard	1-6	0	465	465
Old Shell Road	1-6	282	130	412
Crichton	1-6	520	253	773
Stanton Road	1-6	3	1077	1080
Fonvielle	1-6	0	1191	1191
Gorgas	1-6	1	1138	1139
Palmer	1-5	52	688	740
Glendale	1-6	549	172	721
Hartley	1-5	0	421	421
Frazier	1-6	0	1197	1197
Scott	1-5	3	1300	1303
Robbins	1-5	2	805	807
Mauvilla	1-6	336	313	649
Hamilton	1-6	643	0	643
Chickasaw	1-6	0	563	563
Rapert	1-6	453	43	496

Elementary Schools	Grade	Students White	Negro	Total
Dodge	1-6	678	54	732
Fonde	1-6	715	11	726
Austin	1-6	391	22	413
Dickson	1-6	772	1	773
Hillsdale	1-6	0	586	586
Orchard	1-5	759	2	761
Will	1-5	678	0	678
Forest Hill	1-5	604	0	604
Whistler	1-6	251	247	498
Thomas	1-6	210	114	324
Indian Springs	1-6	535	11	546
Eight Mile	1-6	344	78	422

HEW PLAN - ORIGINAL

Junior or Middle Schools	Grade	Students White	Negro	Total
Rain	7-8	415	38	453
Eanes	7-9	982	57	1039
Craighead	6-7	153	394	547
Phillips	7-8	838	113	951
Dunbar	7-8	5	928	933
Washington	7-9	0	1493	1493
Mobile County Training	6-8	0	568	568
Prichard	6-9	387	163	550
Carver	6-7	0	881	881
Trinity Gardens	7-8	0	420	420
Clark	7-9	1317	239	1556
Azalea Road	7-8	1044	40	1084
Hillsdale	7-9	0	225	225
Scarborough	6-8	1039	1	1040
Eight Mile	7-8	206	30	236

Affidavit of James A. McPherson, Filed on April 10, 1970

HEW PLAN - ORIGINAL

ior High		Students		
ools	Grade	White	Negro	Total
	9-12	760	49	809
lliamson	8-12	3	1131	1134
ew	9-12	2707	147	2854
ral	9-12	0	1614	1614
kinsville	10-12	0	1107	1107
ile County Training	9-12	0	710	710
ent	8-12	0	1894	1894
ge	10-12	1564	109	1673
city Gardens	9-12	0	637	637
dson	9-12	2289	66	2355
s	9-12	1136	196	1332

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT H

HEW PLAN - B - ALTERNATIVE

Information taken from a report
filed with the Court by HEW Officials

Elementary Schools	Grade	Students White	Students Negro
South Brookley	1-6	514	72
Morningside	1-5	756	0
Williams	1-6	571	43
Maryvale	1-5	588	30
Mertz	1-5	482	0
Westlawn	1-5	595	0
Woodcock	See Junior High Schools		
Hall	1-5	483	664
Arlington Council	1-5	350	659
Emerson	1-5	3	518
Leinkauf	1-5	273	165
Owens	1-5	2	1414
Caldwell	1-5	1	401
Howard	1-5	0	465
Old Shell Road	1-5	232	295
Crichton	1-5	438	348
Stanton Road	1-5	6	900
Fonvielle	1-5	0	1000
Gorgas	1-5	3	963
Palmer, Glendale	1-5	434	931
Whitley	1-5	216	481
Brazier	1-5	10	1022
Grant	1-5	15	1285
Robbins, Hamilton	1-5	638	855
Bienville	See Vigor - Bienville, Carver, Blount -		
Chickasaw	1-5	473	100
Shepard	1-5	453	43

Affidavit of James A. McPherson,
Filed on April 10, 1970

Elementary Schools	Grade	Students White	Negro	Total
Dodge	1-5	565	45	610
Fonde	1-5	715	11	726
Austin	1-5	391	22	413
Dickson	1-5	680	125	805
Hillsdale	See Junior High Schools			
Orichard	1-5	759	117	876
Will	1-5	678	0	678
Forest Hill	1-5	604	0	604
Whistler	1-5	181	205	386
Thomas	1-5	180	95	275
Indian Springs	1-6	535	11	546
Eight Mile	1-6	280	66	346

HEW PLAN - B - ALTERNATIVE

Junior or Middle Schools	Grade	Students White	Negro	Total
Rain	7-8	415	38	453
Banes-Woodcock	6-9	980	764	1744
Craighead	See Senior High Schools			
Phillips, Washington, Toulminville	6-9	1040	1562	2602
Dunbar, Central	6-9	1044	1562	2606
Washington	See Above			
Mobile County Training	6-7	432	859	1291
Prichard	6-7	240	410	650
Carver	See Vigor - Bienville, Carver, Blount — High School			
Trinity Gardens	6-7	380	690	1070
Clark	8	536	948	1479
Azalea Road	6-7	857	133	990
Hillsdale	8	858	131	989
Scarborough	6-7	855	133	988
Eight Mile	7-8	270	42	312

Affidavit of James A. McPherson,
Filed on April 10, 1970

HEW PLAN - B - ALTERNATIVE

Senior High Schools	Grade	Students		
		White	Negro	Total
Rain	9-12	735	59	794
Williamson-Craighead	10-12	1008	767	1775
Murphy	10-12	1440	1913	3353
Central	See Junior High Schools			
Toulminville	See Junior High Schools			
Mobile County Training	See Junior High Schools			
Blount --				
Vigor	9-12	1908	3516	5424
Trinity Gardens	See Junior High Schools			
Davidson	9-12	1738	51	1789
Shaw	9-12	1150	196	1346

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT J

PARENT AND STUDENT GRIEVANCES
Mobile Public Schools
August 27, 1969

1. Channels of communication shall be established and maintained by local school principals to facilitate the appropriate involvement of pupils enrolled in senior high schools and in junior high or middle schools in the development and the improvement of public education; said involvement to include the opportunity for students to share with professional personnel information, concerns and suggestions concerning their educational opportunities.

2. Principals, with the assistance of professional personnel working under their supervision, shall formulate procedures to achieve this objective. Said procedures shall be made known in appropriate ways to students, to professional personnel and to parents of students enrolled; and a copy of said procedures shall be filed with the Assistant Superintendent in Charge of Administration.

3. Individual students who are displeased with action taken by their teachers may take their problems to their principals. If individual students are dissatisfied with action taken by their principals, they may take their problems to their parents or their guardians; then parents or guardians who wish to do so may take their children's problems to local school principals. If parents or guardians are displeased with decisions rendered

and with action taken by school principals, they may take their problems to the Assistant Superintendent in Charge of Administration of Local Schools. If parents or guardians are displeased with decisions rendered and with action taken by the Assistant Superintendent in Charge of Administration, they may take their problems to the Superintendent who, in turn, will appropriately involve the Associate Superintendent as a basis for rendering decisions and for taking corrective action as justified by circumstances. Parents or guardians who are dissatisfied with decisions rendered and with corrective action taken by the Superintendent may then submit in writing background reports on their problems to the Superintendent to be made a part of a regular School Board Agenda. If parents or guardians do not wish to submit written reports on their problems, they may appear at a Board Meeting on regular delegation days and present their unresolved problems to the Board in conformity with the Board's policy dealing with delegations.

4. Groups of students who have grievances, who have concerns about their educational opportunities, and who wish to make suggestions on ways of improving their educational opportunities, may share their concerns and their suggestions with their Student Council. If the Student Council feels that oral and/or written reports submitted deal with matters of general concern to students and merit the consideration of the principal, then appropriate officers of the Student Council may confer with their principal on matters of concern. If the Student Council is dissatisfied with decisons rendered by

the principal or with corrective action taken, it may then submit a written report on student grievances to the Executive Committee of the PTA. If the Executive Committee of the PTA feels that the expressed views and concerns of students merit more consideration than that given by the principal, said committee may then confer with local school principal about problems and issues reported by the Student Council. If the Student Council is dissatisfied with action take by the PTA Executive Committee, it may submit a report in writing to the Superintendent, setting forth its concerns, its grievances, and its suggestions, sending copies of said report to the principal and to the President of the PTA. The Superintendent, in turn, shall furnish copies of said report to members of the Administrative Staff and to members of the School Board.

5. Preliminary to taking action on written reports submitted by the Student Council, the Superintendent shall seek background reports on student's expressed concerns and suggestions from the local school principal and from the President of the local school PTA.

6. If a Student Council is displeased with action taken by the Superintendent, it may request the Superintendent to arrange a conference with the Board. The Board, in turn, on the basis of written reports submitted by the Student Council, by the school principal, by the President of the PTA and by the Superintendent shall decide whether or not a request for a conference will be granted. If such a request is granted, the principal and members of the Executive Board of the PTA shall be invited to attend.

Court of Appeals Opinion of June 8, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

BELL, *Circuit Judge*: We consider again the effort to convert the Mobile County School System from dual to unitary status. This is the ninth appeal of the matter to this court.[1] The system is now operating on a student assignment system fashioned by the district court after considering a school board plan of assignment, three separate HEW plans, and one plan submitted by the Department of Justice.

In *Singleton* v. *Jackson Municipal Separate School District*, supra, fn. (1), we approved the student assignment plan of the Mobile County system then in effect for all schools located west of Interstate Highway 65. This appeal basically complains only of the student assignments in the schools located east of I-65. However, in an effort finally to adjudicate the status of this system from the standpoint of all of the essentials required to convert a dual school system into a unitary school system, we have obtained supplemental findings of fact from the district court. See *Ellis* v. *The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970]; *Mannings* v.

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[1] *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile case and 12 additional school desegregation cases); *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1969, 414 F.2d 609; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1968, 393 F.2d 690; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1966, 364 F.2d 896; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1964, 333 F.2d 53; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1963, 322 F.2d 356; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1963, 318 F.2d 63; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1970, 422 F.2d 1139.

The Board of Public Instruction of Hillsborough County, Florida, 5 Cir., —— F.2d —— [No. 28,643, slip opinion dated May , 1970], as examples of the same approach.

In *Ellis* v. *Orange County* and in *Mannings* v. *Hillsborough County,* we adverted to the school desegregation requirements set out in *Alexander* v. *Holmes County Board of Education,* 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; *Green* v. *County School Board of New Kent County,* 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, and the decision of this court in *Singleton* v. *Jackson Municipal Separate School District,* supra. In *Ellis* v. *Orange County,* we said:

> "... In *Green* v. *County School Board of New Kent County,* ... the mechanics of what must be done to bring about a unitary system were outlined. They were stated in terms of eliminating the racial identification of the schools in a dual system in six particulars: composition of student bodies, faculty, staff, transportation, extracurricular activities, and facilities. ... It was such dual systems, organized and operated by the states acting through local school boards and school officials, which were held unconstitutional in *Brown* v. *Board of Education,* 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (Brown I), and which were ordered abolished in *Brown* v. *Board of Education,* 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (Brown II).
>
> "In *Green* the court spoke in terms of the whole system—of converting to a unitary, nonracial school system from a dual system. Then, in *Alexander* v. *Holmes County Board of Education,* ... the court pointed to the end to be achieved. The result, if a con-

stitutionally acceptable system may be said to exist, must be that the school system no longer operates as a dual system based on race or color but as a 'unitary school . . . [system] within which no person is to be effectively excluded from any school because of race or color.' . . . " —— F.2d at p. ——.

We thus proceed to a determination of the status of the Mobile system with respect to each of the six essential elements which go to disestablish a dual school system.[1] We find the system deficient in student assignment in certain schools and also in faculty and staff assignment.

The Mobile system covers the whole of Mobile County including the City of Mobile. The county is quite large in area, embracing 1,222 square miles. There are a total of 96 schools in the system in 91 buildings, and the 96 schools consist of senior high, junior high, and elementary schools plus one special school. Some of the buildings house separate elementary or junior high or high schools; others house combinations of these. There were 73,504 students in the system as of September 26, 1969. This total breaks down into 42,620 or 58 per cent white students, 30,884 or 42 per cent Negro students. Under the present plan 18,623 or 60 per cent of the Negro students in the system are as-

[1] Under the stringent requirements of *Alexander* v. *Holmes County Board of Education*, supra, which this court has carried out in *United States* v. *Hinds County School Board*, 5 Cir., 1969, 417 F.2d 852 [Nos. 28030, 28042, Nov. 7, 1969], this court has judicially determined that the ordinary procedures for appellate review in school segregation cases have to be suitably adapted to assure that each system, whose case is before us, "begin immediately to operate as unitary school systems." Upon consideration of the record, the court has proceeded to dispose of this case as an extraordinary matter. Rule 2, FRAP.

signed to schools having all or virtually all Negro student bodies. These Negro students are housed in 12 elementary, 3 junior high schools, 1 combination junior-senior high, and 3 senior high schools.

Faculty and Staff

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson*, supra, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. The faculty ratio for the system is approximately 60 per cent white and 40 per cent Negro. As of April 7, 1970, there were 1,642 white faculty members and 1,098 Negro members or a total of 2,740. We have no information on staff ratios.

The Mobile County school system has almost totally failed to comply with the faculty ratio requirement although ordered to do so by the district court on August 1, 1969. Only a few schools approach the 60-40 faculty ratio. The district court is directed to require strict compliance with the *Singleton* v. *Jackson* rule for faculty and staff on or before July 1, 1970.

Transportation, Facilities and Extracurricular Activities

In the 1967-68 school term, 207 school buses transported 22,094 students daily. The facts disclose that school buses are used in all rural areas of the county and in the outlying areas of metropolitan Mobile and that they are operated on a non-segregated, non-discriminatory basis. The facts

also demonstrate that all extracurricular activities and facilities are operated on the same basis. Indeed, there is no complaint regarding transportation, facilities and extracurricular activities. The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson*, supra, as to transportation, school construction and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system. Unlike Orange County (*Ellis* v. *Orange County*, supra), Mobile does not purport to use the strict neighborhood assignment system. It employs zones based on discretionary zone lines. In that sense it is like the Hillsborough County system (*Mannings* v. *Hillsborough County*, supra), and the situation, as in Hillsborough, can be greatly improved by pairing some schools located in close proximity to each other. See the description of neighborhood pairing used in *Mannings* v. *Hillsborough County*. The situation can also be improved by recasting the grade structure in some of the buildings but, at the same time, maintaining the neighborhood school concept.

The plan submitted by the Department of Justice on January 27, 1970, contemplates both pairing and the recasting of grades. It produces a result of 9 all or virtually all Negro student body elementary schools instead of 12

as at present, and 1 senior high school of the same type instead of 7 junior and senior high schools as at present. Instead of 60 per cent of the Negro students being assigned to such schools, the result under the Department of Justice plan would be 28 per cent (8,515 students instead of 18,623). Every Negro child would attend an integrated school at some time during his education career under the Department of Justice plan.

The result to be achieved under this plan proves an obvious fact. Ordinarily, it is easier to desegregate high and junior high schools than elementary schools. This is due to the difference in the size of the schools. Elementary schools are generally smaller and thus they receive students from a more restricted area. On the other hand, high and junior high schools, with their large student capacities, encompass larger areas and, more likely, areas containing diverse racial groups.

We conclude that the Department of Justice plan, as hereinafter modified, must be invoked. By way of modification, it will be necessary to desegregate the one all Negro high school—Toulminville. It appears from maps of record that the zone line between Murphy high and Toulminville high can be redrawn so as to include some of the students living in the area of the Crichton elementary school. Some of these students appear to reside nearer Toulminville than Murphy. In addition, the Department of Justice plan must be modified to close the Emerson elementary school (soon to be eliminated in an urban renewal project). This school would have an all Negro student body under the Justice Department plan. The 450 students who would be assigned to Emerson are to be assigned as follows: 200 to Council, 200 to Caldwell, and 50 to Lienkauf.

This will leave only 8 all Negro student body schools (all elementary), with 25 per cent of the Negro students assigned thereto (7,725 instead of 18,623), and every Negro child in the Mobile system will attend school in a desegregated junior high and high school on a neighborhood basis.[3]

Attached as Appendix A is a chart depicting student body composition by school and race under the present district court plan and the Department of Justice plan of January 27, 1970.[4] The district court is directed to im-

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[3] The Department of Justice plan coupled with the Toulminville and Emerson feature seems superior to the HEW plans. Any one of the plans, HEW or Department of Justice as modified, would lead to a unitary system. The original HEW plan (Plan B), filed on July 10, 1969, principally utilized zoning, but also proposed transporting approximately 2,000 Negro students from the heavy Negro concentration in eastern Mobile to predominantly white schools in the western and southern part of Mobile. It did not contemplate transporting white students in exchange. This plan would retain 6 all Negro schools serving 5,949 Negro students, or 19 per cent of the total Negro students in the system. HEW Plan B-alternative, filed December 1, 1969, employed contiguous zoning as well as contiguous pairing. The plan contemplated no transportation of students. It would leave 9 all Negro schools serving 7,971 students, or 26 per cent of the total. HEW Plan B-1-alternative, filed December 1, 1969, was limited to elementary schools and incorporated Plan B-alternative for junior and senior high schools. The plan involves non-contiguous pairing of each all Negro school in eastern Mobile with a predominantly white school in western or southern Mobile (across the system). The plan calls for cross-transportation of both whites and Negroes. There would be no all Negro schools under this plan. This non-neighborhood plan is euphemistically referred to in plaintiff's brief as a "Shared Neighborhood Plan."

[4] The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court.

plement the Department of Justice plan on or before July 1, 1970 together with the Toulminville-Murphy and Emerson changes above described.

From the standpoint of demography, a majority of the Negro population in the Mobile school system is situated in a concentrated area within the City of Mobile to the east of Highway I-65. The all Negro student body schools which will be left after the implementation of the Department of Justice plan as modified, are the result of neighborhood patterns. This condition can be further alleviated through a majority to minority transfer policy and through the functioning of a bi-racial committee. The student assignments in the school system depend on zone lines which are drawn on a discretionary basis and therefore may be subject, in some instances, to abuse and in others, to improvement. The proper administration of zone lines depends upon good faith in establishing and maintaining the lines as well as continuing supervision over them.

The district court is directed to see that a bi-racial committee of the type described in *Ellis* v. *Orange County*, supra, is established. See *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1970, —— F.2d —— [No. 29226, slip opinion dated May , 1970]. In addition, the district court is directed to require the majority to minority transfer rule of *Ellis* v. *Orange County*. All transferring students must be given transportation if they desire it and the transferee is to be given priority for space.

The district judge is also directed to require that the bi-racial committee serve in an advisory capacity to the school board in the areas of the operation of the majority to minority transfer rule, the promulgation and maintenance of zone lines, and in school site location. As we said

in *Ellis* vs. *Orange County*, with respect to eliminating all Negro student body schools:

> " . . . The majority to minority transfer provision under the leadership of the bi-racial committee is a tool to alleviate these conditions now. Site location, also under the guidance of the bi-racial committee, will guarantee elimination in the future. In addition, open housing, Title VIII, Civil Rights Act of 1968, 42 USCA, § 3601, et seq., *Jones* v. *Mayer*, 1968, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189, will serve to prevent neighborhood entrapment."

Deficiencies to Be Remedied

We conclude that three of the six elements that go to make up a unitary system have been accomplished in Mobile County: transportation, extracurricular activities, and facilities. The remaining deficiencies in faculty and staff desegregation and in student assignment must be remedied on or before July 1, 1970 on the basis heretofore stated. All other direction herein given to the district court must also be accomplished not later than July 1, 1970.

Once done, and when the district court, by the standards herein stated, has made its own conclusion as to the system being unitary, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court said in *Green*, " . . . whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed." 391 U.S. at 439.

Reversed and Remanded with direction.

APPENDIX "A"

COMPARISON OF DEPARTMENT OF JUSTICE PLAN WITH DISTRICT COURT PLAN

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
ELEMENTARY SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
South Brookley	1-6	502	71	1-6	484	76
Morningside	1-5	631	0	1-5	751	0
Williams	1-6	571	43	1-6	554	60
Maryvale	1-5	414	117	1-5	453	171
Mertz	1-5	498	104	1-5	453	0
Craighead	1-5	347	489	1-5	290	569
Arlington	1-5	160	170		- closed -	
Council	1-5	4	391	1-5	2	548
*Emerson	1-5	0	450		- closed -	
Lienkauf	1-5	273	165	1-5	224	235
Woodcock	1-5	424	167	1-5	193	186

		Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*	
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Westlawn	1-5	532	0	1-6	541	0
Crichton	1-5	438	348	1-6	457	240
Old Shell Road	1-5	232	295	1-6	267	106
Caldwell	1-5	0	350	1-6	20	390
Howard		- closed -		1-6	12	432
Owens	1-5	2	1414	1-6	0	1121
Fonvielle	1-5	0	1000	1-6	4	1163
Stanton Road	1-5	6	900	1-6	6	976
Gorgas	1-5	7	963	1-6	4	1168
Brazier	1-5	10	1022	1-5	0	955
Grant	1-5	15	1285	1-5	0	1231
Palmer/Glendale	1-5	434	931	1-5	66	600
Glendale/Palmer	1-5	434	931	1-5	385	192
Whitley	1-5	216	481	1-5	0	383
Robbins/Hamilton	1-5	638	855	1-5	0	859

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Hamilton/Robbins	1-5	638	855	1-6	622	0
Chickasaw	1-5	473	100	1-6	495	3
WEST OF I-65						
Whistler	1-5	181	205	1-6	227	231
Thomas	1-5	180	95	1-6	222	101
Indian Springs	1-5	535	11	1-6	520	12
Eight Mile	1-6	280	66	1-8	586	110
Shepard	1-6	409	29	1-6	409	29
Dodge	1-6	675	65	1-6	675	65
Austin	1-6	396	22	1-6	396	22
Fonde	1-6	679	11	1-6	679	11
Dickson	1-6	835	193	1-6	835	193
Orchard	1-5	754	113	1-5	754	113
Will	1-5	657	175	1-5	657	175
Forest Hill	1-5	560	0	1-5	560	0

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
MIDDLE SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Eanes/Hall	6-9	1292	977	6-8	978	280
Hall/Eanes	6-9	1292	977	6-8	180	838
Phillips/Washington	6-9	1170	1716	7-8	691	179
Washington/Phillips	6-9	1170	1716	7-9	0	1463
Dunbar	6-9	181	985	7-8	5	738
Central	6-9	468	1206	9-12	0	1233
Mobile Co. Training	6-7	432	859	6-12	57	1125
Prichard	6-7	240	410	6-8	299	201
Trinity Gardens	6-7	380	690	6-8	0	996
Clark	8	536	948	7-9	1080	290
WEST OF I-65						
Azalea Road	7-8	1039	38	7-8	1039	38
Scarbrough	6-8	638	77	6-8	638	77
Hillsdale	6-8	431	217	6-8	431	217

	Projected Enrollment Under Zones Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
HIGH SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Williamson	10-12	880	471	9-12	472	383
Murphy	10-12	1643	1761	9-12	2340	513
**Toulminville	10-12	9	740	10-12	0	1125
Blount/Carver	9-12	854	1846	9-12	8	1818
Carver/Blount	9-12	854	1546	6-8	1	899
Vigor/Bienville	9-12	1134	1211	9-12	1447	439
Bienville/Vigor	9-12	1134	1211	1-6	288	313
WEST OF I-65						
Davidson	9-12	2302	72	9-12	2296	72
Shaw	9-12	1250	240	9-12	1242	237

* An optional provision of the Department of Justice plan called for closing all Negro Emerson elementary school and assigning its 450 students to six non-contiguous schools: Maryvale, Woodcock, Westlawn, Fonde, Morningside, and Lienkauf. This option is eliminated. As modified by the court, the students who would attend Emerson will, instead, attend Council, Caldwell and Lienkauf. Council will have 4 white and 591 Negro students, Caldwell will have 550 Negro students, and Lienkauf will have 273 white and 215 Negro students.

** To be rezoned and integrated (see modification in text).

Court of Appeals Judgment of June 8, 1970

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded with direction to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendants-appellees-cross appellants and intervenor-appellees pay the costs on appeal to be taxed by the Clerk of this Court.

June 8, 1970

Issued as Mandate: Jun 8 1970

District Court Order of June 12, 1970

Pursuant to the mandate of the Fifth Circuit Court of Appeals dated June 8, 1970, and received by this court on June 10, 1970, which reverses and remands with directions, this Court's desegregation plan for the Mobile County Public School System of January 31, 1970, and after consideration of such mandate, it is hereby ORDERED, ADJUDGED and DECREED by the Court that the defendants, Mobile County School Board, implement the desegregation of the Mobile County Public School System on or before July 1, 1970, as follows:

STUDENT ASSIGNMENT

It is ORDERED that those area attendance zones offered by the United States Justice Department on January 27, 1970, be assigned as the school zones under which the public school system will operate beginning with the 1970 Fall semester until further orders of this Court. The school board is directed to begin preparation and implementation of such area school zones immediately with the following exceptions: Toulminville High School attendance zone area and the Emerson Elementary School area shall be drawn by the Court and the Court shall submit this order within the immediate future. The school board is directed to furnish to the Court on Tuesday, June 16, 1970, the pupil population data for the Emerson Elementary and Toulminville High School attendance area including grade attendance and enrollment. Other than the above referenced attendance areas, the Justice Department attendance zones as drafted on January 27, 1970, shall be implemented as drafted.

District Court Order of June 12, 1970

FACULTY AND STAFF DESEGREGATION

On or before July 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. Under the present faculty employment the racial composition of Mobile County School system is approximately 60% white and 40% Negro; therefore, in accordance with the above stated policy it shall be necessary for the school faculty assignments to be made on a 60% white and 40% Negro basis. Beginning the 1970 Fall semester, the school board shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

Paragraph 7 of this Court's decree entered on August 1, 1969, pertaining to faculty reduction, vacancies and demotion are incorporated herein and shall remain in full force and effect.

MAJORITY TO MINORITY TRANSFER POLICY

The school board shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority

and all such transferring students must be given transportation to their chosen school if they desire it and the transferee is to be given priority for space.

TRANSPORTATION, EXTRA CURRICULAR ACTIVITIES AND FACILITIES

The School Board is directed to continue to operate transportation, extra curricular activities and school facilities on a non-discriminatory basis in accordance with the past orders of this Court.

By supplemental order to be entered within the immediate future the Court shall direct that there be established a biracial committee serving in an advisory capacity to the school board in the following areas of the public school system operations: (1) Application of majority to minority transfer rule; (2) promulgation and maintenance of area within zone lines; (3) school site location.

DONE THIS THE 12th day of June 1970.

DANIEL H. THOMAS,
United States District Judge.

Court of Appeals Orders of June 29, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

IT IS ORDERED that appellees' motion for leave to file petition for rehearing out of time and leave to file petition for rehearing in excess of 10 pages but not to exceed 20 pages is hereby GRANTED.

It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause be, and the same is hereby

DENIED.

District Court Order of July 13, 1970

The Order of this Court entered in this case on June 12, 1970, is amended in the following respect:

Pursuant to Footnote "4" of the opinion of the Fifth Circuit Court of Appeals in this case, entered on June 8, 1970, the area attendance zones for the 1969-70 school year are amended as shown by the maps hereto attached marked Exhibit "1", "2", and "3" for the elementary school, middle school and high schools respectively, which said maps show the area attendance zone for each school and the grade structure for each school.

Exhibit "4" attached hereto shows the feeder pattern for the entire school district. The facility heretofore known as the Gorgas School is closed and the students heretofore attending Gorgas are assigned to Fonville. In all other respects the Order of June 12, 1970, remains in full force and effect.

Done this, the 13th day of July, 1970.

DANIEL H. THOMAS,
United States District Judge.

[Maps omitted—see original record]

District Court Order of July 13, 1970

(See opposite) ☞

District Court Order of July 13, 1970

EXHIBIT "4"

Feeder pattern

Elementary	Middle	High
Crichton		
Stanton Road	Phillips	Toulminville.
Dodge		
Shepard		
Forde		
Dickson	Azalea Road	Davidson
Austin	Scarborough	Davidson
Forest Hill		
Orchard [1]	Scarborough	Shaw
Orchard [1]		
Wil	Hillsdale	Shaw
Williams		
South Brookley	B. C. Rain	B. C. Rain
Morningside		
Maryvale	Eanes	
Craighead		Williamson
Arlington		
Council	Hall	Williamson
Caldwell		
Leinkauf	Dunbar	
Owens [2]		Murphy
Old Shell		
Woodcock [3]	Central	Murphy
Fonville		
West Lawn		
Mertz	Washington	
Bratier		
Thomas	Trinity Gardens	Blount
Whistler		
Robbins (Northern)		
Hamilton		
Chickasaw Southern)	Clark	Vigor
Robbins (Southern)		
Chickasaw (Northern)		
Grant (Western)	Clark	Blount
Glendale (Western)		
Palmer (Western)		
Grant (Eastern)	Prichard	Vigor
Palmer (Eastern)		
Whitley	Mobile County Training	Vigor
Glendale (Eastern)		
Eight Mile	Eight Mile	Blount
Indian Springs (Eastern)	Eight Mile	Blount

[1] Students in the eastern section of the Orchard Elementary attendance area will attend Scarborough Jr. High. Those in the western and southern sections will attend Hillsdale.

[2] With some exceptions (see maps) students in the southeast section of the Owens Elementary attendance area will attend Dunbar Middle School.

[3] Students in the eastern section of the Woodcock Elementary attendance area will attend Dunbar Middle School.

District Court Order of July 30, 1970

Since the Court's order of July 13th fixing attendance area zones, the Court has detected areas which necessitate changes being made. In one particular area, namely, Dodge School, under the order of the 13th, children in Grades 1-6 were assigned to the Dickson School who had previously been assigned to Dodge School. Both schools are predominantly white and the children involved are predominantly white. In order for these children to get to Dickson some would have to travel 9.7 miles and the closest of this group would have to travel five or six miles. In order to get to Dodge School the most these children would have to travel is not more than two to two and one-half miles. Under the Court's order of the 13th, Dodge School would be substantially under capacity, and Dickson, slightly under capacity. Consequently, the northern boundary of the Dodge School attendance zone and the southern boundary of the Dickson School attendance zone are moved northward as shown on the amended Elementary Attendance Zone map hereto attached.

In the July 13th area attendance zone map, the northern boundary of Westlawn was at Emogene Street, which would necessitate the children in Grades 1-5 to attend Crichton School. In order to reach Crichton, it would necessitate crossing dangerous thoroughfares and to travel a much greater distance than if they were to attend Westlawn. Consequently, the southern boundary of the Crichton attendance zone is moved northward from Emogene to Dauphin Street.

Since the July 13th order, the School Board has suggested certain changes. All of these the Court has seri-

ously considered and feels that some changes should be made. While some of these suggested changes, to a slight extent, disrupt feeder patterns which the Court had established, nevertheless, in most instances they assign children closer to their home and make travel less difficult. Consequently, the Court alters its area attendance zones filed with its July 13, 1970, order as shown by maps hereto attached. These changes in the Court's opinion have no racial significance, but bring about a substantial improvement over the plan filed on the 13th.

DONE at Mobile, Alabama, this the 30th day of July 1970.

DANIEL H. THOMAS
United States District Judge

[Maps omitted—see original record]

Court of Appeals Opinion of August 4, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

BELL, *Circuit Judge*: We consider again the Mobile School case. This time it comes to us on a motion for injunctive relief pending application for certiorari; or in the alternative, that we vacate the order of the district court entered on July 13, 1970 in implementation of our decision of June 8, 1970 as to student assignment. We deny injunctive relief and modify the order of July 13, 1970. In addition, we require that a biracial advisory committee to the school board be established forthwith.[1]

It will be necessary to review the action in the district court since the issuance of the mandate of this court pursuant to our decision of June 8, 1970. The appeal which gave rise to that decision came to us in the posture of the Mobile school system being operated in an unconstitutional manner with respect to faculty and staff as well as student assignment. We reversed with direction. The direction was to order that the faculty and staff ratio which was decreed in *Singleton* v. *Jackson*, 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile and 12 additional school desegregation cases), be effected throughout the system. We also directed that the majority to minority transfer provision of *Ellis* v. *The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970], be required.

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[1] We treat this motion as a part of the previous appeal since the relief sought goes to the efficacy of the mandate of this court. For such purposes and so that our previous mandate may be amended, the mandate of the court is recalled.

The district court carried out this direction explicitly in an order dated June 12, 1970.

We also directed that a bi-racial committee be established to advise with the school board, and that stated duties be assigned the bi-racial committee. The district court stated in the order of June 12, 1970 that a supplemental order would be entered to effectuate this direction. Appellants state that the bi-racial committee has not been established.

With respect to the student assignment plan as revised by the district court in its order of July 13, 1970, some background is necessary. The case came to us with 60 per cent or 18,623 of the total of 30,884 Negro students assigned to 19 all Negro or virtually all Negro student body schools. We studied the several proposed student assignment plans in the record on appeal and concluded that the Department of Justice plan would disestablish the dual school system if modified in some particulars. Under that plan, as modified by us, the Mobile school system would open in September 1970 with no all Negro or virtually all Negro high or junior high schools and with only 8 all Negro elementary schools. The number of Negro students attending these all Negro or virtually all Negro student body schools was reduced from 18,623 to 7,725 or 25 per cent of the total, and these in grammar schools only. Every Negro child would receive an integrated junior high and high school education.

In addition to directing that the district court draw a new zone line so as to desegregate Toulminville High School (all Negro), we recognized the possibility of the figures on which we relied being inaccurate. In footnote 4 we said:

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"The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court."

It developed on remand that there were inaccuracies. For example, according to the order of the district court dated July 13, 1970 (chart attached to order showing racial composition and capacity of schools, reproduced infra), our plan made no provision for the 6th grade children in the Indian Springs school. Our plan, which was based on the plans of record, was also in error in some instances as to school capacity, i.e., the schools would not accommodate the numbers contemplated. In this connection we assigned 2,886 students to Phillips Junior High which has a permanent capacity of 980. There were other such errors but not of this magnitude. We knew that some of the schools had portable class rooms but the record did not disclose the number.

At any rate, our view was and is that the exigencies of the situation required that this court promulgate a plan of student assignment meeting constitutional standards for immediate implementation rather than to continue the backing and filling which is inherent in the appellate and remand process, and which had been demonstrated by the many previous appeals of this matter including two during

the 1969-70 school term. We consider school desegregation cases as presenting important public questions deserving of decision and facilitation in the most expeditious manner within the limits of due process and judicial propriety.

It was never our thought, although appellants seem to think otherwise, that the district court was stripped of its discretion to adjust the assignment plan to the end of making it workable. The district court could not, of course, make changes which would diminish the plan from the standpoint of constitutionality nor diminish the extent of the desegregation required by this court.

Indeed, immediately upon receipt of our decision, the defendant school board moved for rehearing on the ground that it was not possible to implement the plan of the decision, pointing to several errors. The motion was denied, the court being of the opinion that such problems or errors as might exist in the plan were for adjustment by the district court.

We turn then to the plan as revised by the district court to determine if the revisions amount to an improper departure from our decision. As stated, the plan of this court left 8 all Negro or virtually all Negro schools (all elementary), with 25 percent of the Negro student population assigned to them. The district court reduced the number of such schools to 7, with a total of 6,085 students or 19 per cent of the Negro student population assigned to them. One of these, the Council school, which is considered by us as virtually all Negro, is to have 40 white students assigned along with 427 Negro students whereas in our plan only 4 whites were to be so assigned.

The district court proceeded from the standpoint of the zoning of the whole district. We considered only that portion of the system east of Highway I-65 except where necessary to go to the west to aid in reducing the number of all Negro schools. The problem was that a majority of the Negro population was concentrated within the city to the east of I-65. In revising our plan, the district court finalized the zoning for the entire system including elementary, junior high and high schools. The feeder system outlined in its order of July 13, 1970 is based on the school zone lines and is nothing more. It is in no way a departure from the applicable zones.

The differences between the plan contained in our June 8, 1970 opinion and the revised district court plan are reflected in the following charts which are a part of the order of the district court of July 13, 1970:

HIGH SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Rain	7-12	1143	112	1150	97	1255	868
Williamson	10-12	824	491	880	471	1315	1305
Murphy	10-12	1300	1027	1643	1761	2327	2813
Toulminville	10-12	247	420	9	740	667	609
Blount-Carver	9-12	1022	1693	854	1846	2715	2697
Vigor-Bienville	9-12	1000	1425	1134	1211	2425	2204
Shaw	9-12	1312	237	1250	240	1549	1015
Davidson	9-12	2201	80	2302	72	2281	1943

MIDDLE SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
B. C. Rain	7-12	1143	112	1150	97	1255	868
Banes	6-9	770	220	1292	977	990	1148
Hall	6-9	336	910	1292	977	1246	1224
Dunbar	6-9	170	770	181	985	947	1064
Central	6-9	387	1164	468	1260	1551	1508
Washington	6-9	748	709	1170	1716	1457	1015
Phillips	6-9	417	695	1170	1716	1112	980
Trinity Gardens	6-8	320	540	380	690	861	868
Prichard	6-8	220	458	240	410	678	615
Mobile County Training	6-8	333	885	432	859	1218	1232
Clark	6-8	703	846	536	948	1549	1392
Scarborough	6-8	884	11	638	77	895	896
Hillsdale	6-8	451	210	431	217	661	784
Azalea Road	7-8	996	38	1039	38	1034	986
Eight Mile*	1-8	549	110	280*	66*	659	598

*District Court plan grade structure is 1-8 and the Fifth Circuit's Plan grade structure is 1-6.

ture is 1-6.

ELEMENTARY SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
South Brookley	1-6	490	71	502	71	561	408
Williams	1-6	561	45	571	43	606	408
Morningside	1-5	672	0	631	0	672	544
Maryvale	1-5	402	257	441	117	659	544
Craighead	1-5	300	506	347	489	806	850
Council	1-5	40	427	4	391	467	544
Arlington	1-5	163	178	160	170	341	476
Caldwell	1-5	87	431	0	350	518	510
Leinkauf	1-5	118	393	273	165	511	442
Owens	1-5	2	1300	2	1414	1302	1428
Old Shell Road	1-5	482	7	332	295	489	476
Woodcock	1-5	255	0	424	167	255	570
Mertz	1-5	415	110	498	104	525	510
Fonville	1-5	37	787	0	1000	824	1088
Westlawn	1-5	384	0	532	0	384	510

ELEMENTARY SCHOOL (Continued)

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Crichton	1-5	379	329	438	348	708	714
Stanton Road	1-5	5	826	6	900	831	1020
Frazier	1-5	0	1120	10	1022	1120	1156
Grant	1-5	30	850	15	1285	880	1122
Glendale	1-5	65	480	434	931	545	884
Palmer	1-5	235	435	434	931	670	568
Whitley	1-5	261	314	216	481	655	578
Robbins***	1-5	0	775	638	855	775	850
Hamilton***	1-5	630	15	638	855	645	646
Thomas	1-5	180	95	180	95	275	272
Whistler	1-5	181	205	181	205	386	510
Chickasaw	1-5	443	0	473	100	443	612
Eight Mile*	1-8	549	110	280	66*	659	598
Indian Springs**	1-6	445	15	535	11	460	408
Orchard	1-5	714	161	754	113	875	816

ELEMENTARY SCHOOL (Continued)

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Forest Hill	1-5	624	0	560	0	624	578
Will	1-5	534	299	657	175	833	816
Austin	1-5	488	10	396	22	498	408
Dickson	1-6	726	5	835	193	731	782
Fonde	1-6	773	13	679	11	786	850
Shepard	1-6	415	29	409	29	444	544
Dodge	1-6	503	50	675	65	553	816
Corgas	CLOSED						

* District Court plan grade structure is 1-8 and the Fifth Circuit plan is grade structure 1-6.

** Fifth Circuit plan made no provision for 6th grade at Indian Springs.

***These schools will be integrated by pairing. (discussed hereinafter)

Court of Appeals Opinion of August 4, 1970

We approve the plan as revised by the district court with one exception. The plan of this court required the pairing of Palmer and Glendale, Robbins and Hamilton, and Eanes and Hall. The latter two are junior high schools. The district court plan eliminates this pairing requirement. This is proper except as to Robbins and Hamilton. These schools are contiguous; Robbins continues with an all Negro student body while Hamilton is predominantly white. The district court is directed to amend its plan so as to pair these two schools. This will reduce the number of all Negro student body schools to 6 with a total of 5,310 or 17 per cent of the total Negro student population assigned to such schools. Thus it is that with this modification of the district court plan, the revised plan achieves an improved result.

We are left with the feeling that this case would not again be here if the revisions had been considered by a bi-racial advisory committee. We directed in our decision of June 8, 1970 that the promulgation and maintenance of zone lines be a matter, among others, for consideration by the bi-racial committee.

The motion of appellants for an order that the district court be required forthwith to carry out our direction to establish a bi-racial committee is granted.

The motion of appellants to vacate the order of July 13, 1970 of the district court is denied subject however to it being amended as stated herein by pairing Robbins and Hamilton.

The motion to implement the student assignment plan set out in our decision of June 8, 1970 is denied in light of the fact that we have now approved an improved plan

which the district court is directed to effectuate upon receipt of the mandate of this court.

The motion to retain jurisdiction in this court with the district court to be used as a special master, cf. *Alexander* v. *Holmes County*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; *United States* v. *Hinds County*, 5 Cir., 1969, 417 F.2d 852, is denied. Such a procedure seems unnecessary in view of the expedited appellate procedures now applicable in this circuit. See *Singleton* v. *Jackson*, supra, 419 F.2d at 1222, and the procedure outlined in footnote 2 to our decision in this matter of June 8, 1970.

This opinion and order amends and supplements our decision and order of June 8, 1970, and together, they shall be considered the final order on this appeal for mandate and certiorari purposes.

Meanwhile, the district court is to proceed to carry out the mandate of this court to the end of converting the dual school system of Mobile County into a unitary system as directed notwithstanding any application for certiorari.

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

(See opposite) ☞

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

ELEMENTARY SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		7/30/70 U.S. DIST. COURT PLAN	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
outh Brookley	1-6	490	71	502	71		
Williams	1-6	561	45	571	43		
Morningside	1-5	672	0	631	0		
Maryvale	1-5	402	257	441	117		
Craighead	1-5	300	506	347	489	290	521
Council	1-5	40	427	4	391	2	560
Arlington	1-5	163	178	160	170	CLOSED	
Baldwell	1-5	87	431	0	350	15	455
Leinkauf	1-5	118	393	273	165	210	170
Ayers	1-5	2	1300	2	1414	1	1242
Old Shell Road	1-5	482	7	332	295		
Woodcock	1-5	255	0	424	167	200	134
Herts	1-5	415	110	498	104		
Pinville	1-5	37	787	0	1000	23	920
Westlawn	1-5	384	0	532	0	486	0
Trichton	1-5	379	329	438	348	390	220
Stanton Road	1-5	5	826	6	900	4	916
Frazier	1-5	0	1120	10	1022		
Grant	1-5	30	850	15	1285	11	955
Glendale	1-5	65	480	434	931	208	554
Palmer	1-5	235	435	434	931	56	546
Whitley	1-5	261	314	216	481	270	352
Robbins	1-5	0	775	638	855		
Hamilton	1-5	630	15	638	855	578	17
Thomas	1-5	180	95	180	95		
Thistler	1-5	181	205	181	205	169	200
Chickasaw	1-5	443	0	473	100		
Eight Mile*	1-8	549	110	280	66		
Indian Springs**	1-6	445	15	535	11		
Orchard	1-5	714	161	754	113	756	117
Forest Hill	1-5	624	0	560	0	519	0
Hall	1-5	534	299	657	175	647	175
Austin	1-5	488	10	396	22	397	20
Dickson	1-6	726	5	835	193	618	193
Fonde	1-6	773	13	679	11	760	12
Shepard	1-6	415	29	409	29	415	29
Dodge	1-6	503	50	675	65	666	66
Gorgas	C L O S E D						

*District Court plan grade structure is 1-8 and Fifth Circuit plan is grade structure 1-6.

**Fifth Circuit plan made no provision for 6th grade at Indian Springs

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

MIDDLE SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. District Court Plan		Fifth Circuit Plan		7/30/70 U. S. District Court Plan	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
B. C. Rain	7-12	1143	112	1150	97		
Eanes	6-9	770	220	1292	977		
Hall	6-9	336	910	1292	977	440	490
Dunbar	6-9	170	770	181	985	133	922
Central	6-9	387	1164	468	1260	241	1389
Washington	6-9	748	709	1170	1716		
Phillips	6-9	417	695	1170	1716		
Trinity Gardens	6-8	320	540	380	690	125	747
Prichard	6-8	220	458	240	410		
Mobile County Training	6-8	333	885	432	859		
Clark	6-8	703	846	536	948	746	855
Scarborough	6-8	884	11	638	77		
Hillsdale	6-8	451	210	431	217		
Azalea Road	7-8	996	38	1039	38		
Eight Mile	1-8	549	110	280*	66*		

*District Court plan grade structure is 1-8 and the Fifth Circuit's plan grade structure is 1-6.

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Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

HIGH SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		7/30/70 U.S. DISTRICT COURT PLAN	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
ain	7-12	1143	112	1150	97		
illiamson	10-12	824	491	880	1315		
rphy	10-12	1300	1027	1643	1761		
lminville	10-12	247	420	9	740		
ount	9-12	1022	1693	854	1846	784	2050
gor	9-12	1000	1425	1134	1211	1238	1095
w	9-12	1312	237	1250	240		
vidson	9-12	2201	80	2302	72		

Court of Appeals Opinion of August 28, 1970

Before

BELL, AINSWORTH, and GODBOLD,
Circuit Judges.

By the Court:

This court mandated a plan of pupil assignment for the Mobile school district in its order of June 8, 1970. This plan was modified by the district court in its order dated July 13, 1970. The district court further modified the plan in an order dated July 30, 1970. On August 4, 1970, we substantially affirmed the modifications made in the assignment plan by the July 13, 1970 order of the district court. We did not have the changes embraced in the July 30, 1970 order before us at the time. Plaintiffs-appellants have now appealed from the July 30, 1970 order.

The July 30, 1970 order makes changes in the attendance zones of 32 separate schools. Some of the changes had no effect from the standpoint of desegregation. Others diminished the degree of desegregation accomplished in the prior orders of this court and the district court. Most of the changes can be affirmed on the basis of efficient school administration and because there is no claim of a racially discriminatory purpose. It is clear that some of the other changes cannot be affirmed and that time is of the essence in resolving the controversy which has arisen over the July 30, 1970 changes in light of the short time before school is to commence in Mobile.

The court has considered the motion for summary reversal, the memoranda in support of and opposition there-

to, and in addition, a pre-hearing conference with counsel has been conducted by Judge Bell for the court pursuant to Rule 33, FRAP. After due consideration, the appeal is terminated on the following basis:

(1) The middle school and high school zone lines shall be the same as those set forth in the July 13, 1970 order of the district court.

(2) The elementary school zones shall be modified as follows:

(a) Palmer and Glendale schools shall be paired.

(b) Council and Leinkauf schools shall be paired.

(c) The area of the Whitley zone as described in the July 30, 1970 order of the district court that lies west of Wilson Avenue shall become a part of the Chicasaw zone.

(d) The area in the Westlawn zone as described in the July 30, 1970 order of the district court that lies north of Dauphin Street shall become part of the Old Shell Road school zone.

(3) Counsel for the school board agrees with counsel for plaintiffs-appellants that they will confer and make facts available regarding desegregation of the school system staffs.

(4) Students who refuse to attend the schools to which they are assigned by the school board under the order of the district court shall not be permitted to participate in

any school activities, including the taking of examinations and shall not receive grades or credit.

(5) Henceforth, any time the school board desires to have changes in zone lines made, it shall give reasonable notice to the parties.

The order of the district court of July 30, 1970 is in all other respects AFFIRMED.

IT IS SO ORDERED.

District Court Order of September 4, 1970

On the 1st day of September 1970, the Board of School Commissioners of Mobile County, presented to the Court six (6) petitions seeking modification of the mandates of the Fifth Circuit Court of Appeals and of this Court in the following areas:

(1) Petition seeking to continue the operation of the sixth grade at the Westlawn School.

(2) Petition seeking to continue the operation of the sixth grade at the Morningside School.

(3) Petition requesting that the boundary line between the Mertz zone and the Morningside zone be redrawn.

(4) Petition seeking to assign students in grades 7-9 who live in the Mertz Elementary zone to Eanes Junior High School instead of Washington Junior High School.

(5) Petition seeking to continue the operation of the sixth grade at the Mertz School.

(6) Petition seeking re-establishment of the Arlington Elementary School and zone.

The Court studied and considered these petitions and also had them reviewed by the Bi-Racial Committee. Now therefore, after study and after having received the report of the Bi-Racial Committee, the Court is of the opinion that said petitions should be and are hereby DENIED.

DONE at Mobile, Alabama, this the 4th day of September 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of September 4, 1970

Pursuant to the Opinions of the Fifth Circuit Court of Appeals dated August 4, 1970, and August 28, 1970, the School Board is directed, commencing with the school term 1970-71, to operate the middle and high schools pursuant to the attendance zones set forth in the decree of this Court of July 13, 1970, and shall operate the elementary schools pursuant to zones established by this Court in its Order of July 30, 1970, with the following modifications:

(a) Palmer and Glendale Schools shall be paired.

(b) Council and Leinkauf Schools shall be paired.

(c) Robbins and Hamilton Schools shall be paired.

(d) The area of the Whitley zone as described in the July 30, 1970, Order of this Court, which lies West of Wilson Avenue shall become a part of the Chickasaw zone.

(e) The area in the Westlawn Zone as described in the July 30, 1970, Order of this Court that lies North of Dauphin Street shall become part of the Old Shell Road School zone.

Students who refuse to attend the schools to which they are assigned by the School Board under this order shall not be permitted to participate in any school activities, including taking of examinations and shall not receive grades or credit and shall not be enrolled in any school in the system except the one serving the zone in which the student legally resides or to which the student has been

officially transferred, and shall not be furnished textbooks or supplies by the School Board.

DONE at Mobile, Alabama, this the 4th day of September 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of September 14, 1970

This Court having, on September 4, 1970, issued an Order in this cause concerning, among other things, the responsibility of the defendant Board of School Commissioners with regard to students attending schools other than the one serving appropriate grades in the zone in which the students legally reside or to which the students have been officially transferred, and having considered the Motion of the United States for injunctive relief and clarification of this Court's September 4 Order.

Hereby orders that the defendant Board of School Commissioners, its members, successors in office, agents, officers, employees, and all persons in active concert or participation with them be, and hereby are enjoined from implementing or enforcing any policy which will frustrate the previous Orders of this Court, and are enjoined from failing to delete from their policies such language as tends to frustrate the previous Orders of this Court.

It Is Further Ordered, as a clarification of the previous Order of this Court on September 4, 1970, that the defendant Board of School Commissioners, its members, successors in office, agents, officers, employees, and all persons in active concert or participation with them be, and hereby are enjoined from offering or affording any privileges to students attending any public school in Mobile County other than the one serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred, which may cause these students to remain away from their appropriate

school or which would encourage them to attend any other public school in Mobile County other than the school serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred; and further are specifically enjoined from providing or allowing to be provided space, facilities or equipment in the Mobile County public schools for the instruction of students at any school other than the school serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred.

IT IS FURTHER ORDERED that the defendant Board of School Commissioners shall immediately instruct all of its agents, officers, and employees of the contents of this Order and shall immediately deliver copies of this Order to the principal at each school in the Mobile County public school system, at the same time notifying the principals of the fact that as agents and employees of the defendant Board of School Commissioners they are bound by the terms of this Order.

IT IS FURTHER ORDERED that the defendant Board of School Commissioners report to this Court by 4:00 P.M. on Thursday, September 17, 1970, that the terms of this Order have been complied with.

DONE at Mobile, Alabama, this the 14th day of September, 1970.

DANIEL H. THOMAS
United States District Judge

District Court Decree of May 13, 1968

Pursuant to the opinion and mandate entered by the Fifth Circuit Court of Appeals on March 12, 1968, reversing this court's previous order and remanding the same to this court, the Court enters the following decree and judgment:

It is ORDERED, ADJUDGED and DECREED that the appellees, their agents, officers, employees and successors and all those in active concert and participation with them be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the Mobile school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system. As stated in the opinion of the Court of Appeals, the primary concern is that attendance-zone lines be drawn on a nonracial basis. To this end the board will conduct a survey as more specifically described in Section IV herein.

I.

STUDENT ASSIGNMENT

A. The appellees shall, to the extent feasible, make assignments of students and draw attendance area lines in such a way as to eliminate the effects of past racial decisions in assigning students, drawing attendance lines, and constructing school buildings.

B. Appellees shall arrange for the conspicuous publication of an announcement, giving detailed information as

to the name and location of schools to which students have been assigned for the coming school year pursuant to the desegregation plan, in the newspapers most generally circulated in the community between March 1 and March 31 of each year. Publication as a legal notice is not sufficient. Whenever any revision of attendance zones is proposed, appellees shall similarly arrange for the conspicuous publication of an announcement at least 30 days before any change is to become effective, naming each to be affected and describing the proposed new zones. Copies of all material published hereunder must also be given at that time to all television and radio stations serving the community. Copies of this notice and decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

C. A street or road map showing the boundaries of, and the school serving, each attendance zone and a chart showing feeder patterns must be freely available for public inspection at the office of the Superintendent. Each school in the system must have freely available for public inspection a map showing the boundaries of its attendance area, and a chart showing its feeder pattern. A copy of this map and chart shall be given to the Parent Teachers Association at each school.

D. After the attendance areas are redrawn to achieve the desegregation of the system as provided in section IV of this decree, all students will be required to attend the school serving their zone, absent some compelling nonracial reason.

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II.

Construction

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not fail to consolidate schools because desegregation would result.

Until such time as the Court approves a plan based on the survey conducted pursuant to section IV herein, construction shall be suspended for all planned building projects at which actual construction has not been commenced.

Leave to proceed with particular construction projects may be obtained prior to the completion of the survey upon a showing by the appellees to the Court, that particular building projects will not have the effect of perpetuating racial segregation.

III.

Faculty and Staff Assignments

A. *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teach-

ers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The Board will continue positive and affirmative steps to accomplish the desegregation of its school faculties and to achieve substantial desegregation of faculties in its schools for the 1968-69 school year notwithstanding teacher contracts for 1968-69 may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The appellees shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. *Dismissals.* Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any

such proposed dismissals, and the reasons therefor, shall be filed with the clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

C. *Past Assignments.* The appellees shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

IV.

Survey

The appellees shall conduct a survey of their school system and report to the Court, by June 1, 1968, unless otherwise specified hereinbelow, the results of such survey, and shall specifically report as follows:

A. The appellees shall prepare a map for each school showing the location, by race and grade, of each student in the school system during the 1967-68 school year. Appellees will be permitted to consolidate the survey information on two maps—one to cover the urban area and the other the rural area—so long as the information is reported on the consolidated maps in a clear and comprehensible manner. However, the survey must designate students by grade.

B. Recommendations for redrawing attendance zone lines to achieve desegregation of the schools.

C. Recommendations for the reorganization of the "feeder" system consistent with the objective of achieving desegregation, to be submitted by August 1, 1968.

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D. A description of each school in the school system to include:

1. The size of each site and whether it is suitable for permanent use, suitable for temporary use, or should be abandoned;

2. The number of buildings on each site and as to each, whether it is suitable for permanent use, suitable for temporary use or should be abandoned;

3. The standards and criteria used to determine whether buildings and sites are suitable for permanent use, suitable for temporary use, or should be abandoned;

4. The number of regular, special and portable classrooms at each school building and the number of square feet in each such classroom;

5. Recommendations for the future use (including grades to be accommodated) of each school building and site for the next ten years, including the need for additional classrooms and the information upon which such recommendations are based, to be submitted by August 1, 1968.

E. A property inventory to include:

1. A list of all sites currently owned;

2. A list of all sites which the appellees have present plans to acquire and the size and intended use of such sites;

3. The basis for selection of all sites listed under numbers 1 and 2.

F. The status of construction of each school building currently under construction and the status of planning for the use of sites currently owned.

G. A forecast of enrollment at each school for the next ten years and the information upon which such forecast shall be based, to be submitted by December 1, 1968.

V.

Services, Facilities, Activities and Programs

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational

programs conducted by the appellees shall be conducted without regard to race or color. Athletic meets and competitions and other activities in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

VI.

Reports

A. On June 10, of each year beginning in 1968, appellees will submit a report to the Court, and serve copies on opposing counsel, showing the number of persons, by school, grade (where appropriate), and race they anticipate will be employed for the fall semester. Within one week after the day classes begin for the fall semester in 1968 and each succeeding year appellees will submit a report to the Court, and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race. In 1968, a date later than June 10 may be appropriate because of the survey.

B. On the same dates set forth in VI (A) above, reports will be submitted to the Court, and a copy served on opposing counsel, showing the number of students by school, grade, and race, expected and actually enrolled at the schools in Mobile County.

C. Within one week after the opening of each school year, appellees shall submit a report to the Court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been

filled by the appellees since the order of this Court or the latest report submitted pursuant to this sub-paragraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

Done at Mobile, Alabama this 13th day of May, 1968.

(Signed) DANIEL H. THOMAS
Chief Judge.

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Comes now the Board of School Commissioners of Mobile County, et al., and, in accordance with the provisions of the decree and mandate of the Fifth Circuit Court of Appeals filed in this cause on June 3, 1969, files objections and suggested amendments to the proposed plan of desegregation heretofore filed in this cause by the Office of Education of the Department of Health, Education and Welfare.

Suggested Amendments

The defendants, after careful study, find that the proposed plan submitted to the Court by H.E.W. is, in its entirety, and when broken down into segments, in each major segment thereof, educationally unsound, administratively impractical and unfeasible and carries within its provisions and potential effect the basis for incalculable harm and probable destruction of the Mobile County Public School System. As suggested amendments to this plan, therefore, the defendants can only recommend that this plan be deleted and disregarded entirely and that in its place the District Court consider as a plan for the operation, and desegregation, of the Mobile County Public School System commencing with the school year 1969-70, either one of the two alternative methods of student assignment set out hereafter:

(1) As a first alternative it is recommended that the District Court enter an order requiring the operation of the school system for the 1969-70 school year on the same basis as the 1968-69 school year;

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(2) As a second alternative, the defendants recommend that the District Court enter an order requiring the operation of the school system for the 1969-70 school year on the basis of a system of complete free choice of schools by all students, consistent with the basic principles of freedom of choice as previously set out by the Fifth Circuit Court of Appeals in *United States* v. *Jefferson County Board of Education*, and any later refinements of the freedom of choice method of student assignment which the Court may wish to apply.

With reference to the matter of the employment and assignment of faculty, staff, and other personnel, it is the position of the defendants that these matters were not at issue in the most recent previous hearing in the District Court, and were therefore not before the Court of Appeals in the appeal out of which the June 3, 1969 mandate and judgment of the Court of Appeals arose, and therefore did not require nor permit of consideration and recommendation by H.E.W. It is the defendants' recommendation, therefore, that this portion of the H.E.W. report submitted to the District Court be deleted and disregarded entirely.

OBJECTIONS

The plan submitted to the District Court by H.E.W. is defective in that:

(1) It is incapable of effective and proper administration;

(2) It is educationally unsound;

(3) It is not in the best interest of the school system;

(4) It is not consistent with the best interest of a majority of the citizens of the county, negro or white;

(5) It is not consistent with the best interest of a majority of the students in the system, negro or white;

(6) If implemented, it will do substantial harm to the school system;

(7) If implemented, it will likely result in destruction, in whole or in part, of public education in the county;

(8) To comply fully with provisions of the plan would require an initial increased expenditure of capital outlay funds in an amount of approximately $13,000,000.00; and this money is not available;

(9) It requires, further, an increased expenditure of approximately $600,000.00 in operating expenses for the 1969-70 school year; and this money also is not available.

(10) It recommends the closing and abandonment of a number of schools in the metropolitan portion of the system; this is undesirable because it results in:

(a) The loss of use of adequate school facilities

(b) Cross-town bussing of large groups of students

(c) overcrowding of other school facilities

(d) destruction of neighborhood schools

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(e) forcing young children to attend schools far removed from their own neighborhoods

(11) It recommends the crosstown busing of large groups of students; this is undesirable because it results in:

(a) drastically increased expense

(b) overcrowding of some school facilities

(c) destructions of neighborhood schools

(d) forcing young children to attend schools far removed from their own neighborhoods

(e) destruction of the ability and desire of students and parents to develop needed support for neighborhood schools

(12) Destroys articulation;

(13) Requires the closing of permanent facilities in favor of the housing of students in temporary portable facilities;

(14) Departs from any concept of organized grade structure resulting in haphazard grade structures and in some instances ONE GRADE schools;

(15) Creates so-called school complexes, which are in fact not complexes and therefore impose insurmountable administrative problems;

(16) Results in a total breakdown of the neighborhood school concept in disregard of natural barriers and

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hazards, safety factors, convenience and other traditional educational concepts;

(17) Requires the use of various school plants in a manner for which they were not planned nor constructed;

(18) Creates completely absurd and gerrymandered school districts with reference to size, safety factors, accessibility, etc.;

(19) Requires a total and complete reorganization of the school system immediately in advance of the beginning of the school year;

(20) Destroys the possibility of conducting many extracurricular activities;

(21) Fails to make any provision for the needs of special education students;

(22) Makes the implementation of an adequate curriculum impossible in many schools;

(23) Results in attendance area lines drawn on a racial basis rather than a non-racial basis;

(24) With reference to student assignment the proposed plan is based entirely on statistics which have been found to be inaccurate in many instances;

(25) The plan includes recommendations with reference to faculty, and this was not a proper function of H.E.W.

(26) Includes no provision for transfer for good cause.

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(27) Recommends procedures and actions in direct contravention of the expressed will of the Congress of the United States.

The plan submitted by H.E.W. is defective in a number of other particulars which, for lack of time to prepare appropriate objections, are not stated here, but will be submitted to the Court in due course.

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FOR THE ASSISTANCE AND INFORMATION OF THE COURT

To the Honorable Daniel H. Thomas, Chief Judge of Said Court:

Comes now the Defendant, The Board of School Commissioners, et al., and for the information and assistance of the Court, files the affidavit of James A. McPherson attached hereto, which contains information relevant to the matters now under consideration by the Court in connection with this cause.

AFFIDAVIT

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me the undersigned authority, in and for said county, in said state, JAMES A. MCPHERSON, who being by me first duly sworn, did depose and say:

My name is James A. McPherson. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I am the number two man in line of authority among the professional administrative personnel of the system, ranking behind only the Superintendent. I am thoroughly and intimately familiar with the school system and its administration and operation, including the desegregation process and court

litigation in connection therewith. I make this affidavit in connection with this litigation, and for the purpose of submission to the United States District Court, Southern District of Alabama. I have testified in that Court on a number of occasions in the past in connection with this litigation. My personal history, educational background, experience, and professional background are before the Court as testimony in the record in previous hearings in this case, consequently I will not recount them here.

Following a mandate and order of the United States Fifth Circuit Court of Appeals entered in the pending Mobile County School litigation on June 3, 1969, I was assigned by the Superintendent the primary responsibility of working with officials of the Office of Education of the United States Department of Health, Education and Welfare (which I will hereinafter refer to as H.E.W.) in the efforts of the Board of School Commissioners of Mobile County and the Mobile County Public School System to comply fully with this mandate and order. We were told by the School Board's Attorney that the District Court on June 4, 1969 contacted H.E.W., and that we should expect to hear from them at any time. In conference with the School Board and the Superintendent, and various other members of the staff, I was instructed to receive the agents or employees of H.E.W. courteously, to cooperate with them fully, to make available to them any information they should request, and to make every effort to arrive at some mutually satisfactory agreement with them with reference to a plan of desegregation to be recommended to the District Court, in compliance with the provisions of

the Court Order. At this point I wish to say that I conscientiously endeavored to comply with these instructions to the fullest extent.

Our first contact from H.E.W., notwithstanding the fact that they had been contacted by the District Court on June 4, was June 11, 1969 when I received a telephone call from Dr. Joe Hall who advised me that he was Director of the U.S. Office of Education, Mobile County Desegregation Study, and that he had been assigned to develop a new desegregation plan for the Mobile School System.

Following initial telephone contact from Dr. Hall, he came to my office on the afternoon of June 11, and we conferred at some length. We discussed the most recent Court Order and I spent considerable time explaining the details to him since he indicated that he had not had an opportunity to study it carefully. I then gave him an historical background report on the course of litigation up through the most recent order. I reviewed the elementary and junior high attendance area maps which were in use last year (the 1968-69 school year) with him, and he stated that they looked pretty good to him as presently drawn.

We then reviewed an outline of a report that he was expected to develop and submit to Mr. J. J. Jordan of the Atlanta Office of H.E.W. He discussed with me the types of information he would request and we agreed that he would provide me, by memo, all requests for information. I noted immediately that this outline called for a report on staff and faculty desegregation and I informed Dr. Hall that the Court Order and the litigation out of which it arose did not concern itself with staff and faculty desegregation in any manner. He expressed surprise to find

that an item had been included in the outline which was not included in the Court Order.

During the course of the conference, Dr. Hall indicated that he would be agreeable to include in the plan a transfer policy providing for transfers for any good cause, non-racial in character. He also stated that he believed it impossible in a large metropolitan area such as Mobile County to develop geographic attendance zones without operating some all black and some all white schools. He stated that he was opposed to the busing of students for the purpose of achieving desegregation, and that he believed the best solution or best method of achieving desegregation was to arrange schools where there would be virtually all predominantly white schools with negro students in the minority.

During the course of the conference, Dr. Hall stated to me that it would be impossible for H.E.W. to come in and do a proper job of evaluating the school system and developing a desegregation plan within the time allowed by the Court Decree. He also expressed to me his further opinion that not only did the judgment of the Court not allow sufficient time for them to properly develop a new plan, but that it provided insufficient time for the staff of the school system to prepare for implementation and administration of any new plan that might be approved, and that the Court should not have entered an Order requiring such broad and sweeping changes in the school system's desegregation plan so near the commencement of a new school year.

Following the June 11 conference there was no further direct contact with H.E.W. until June 20; however, by

correspondence with Dr. Hall, a working relationship was finally established by approximately June 16.

On June 20, 1969, there was a further conference with Dr. Hall attended by myself and several members of our staff. The purpose of the meeting was to present to Dr. Hall information that had been developed by the staff concerning desegregation of the rural portion of the system. I advised Dr. Hall that it was still the firm opinion of the staff and the school board that some sort of freedom of choice plan or option plan would be by far the best method under which schools in the rural portion of the system could be operated successfully and at the same time, desegregated. At the same time however, I went further and discussed with Dr. Hall details of the work that had been done by the staff towards developing a plan based upon geographic attendance areas. This plan indicated extensive integration and would have resulted in every school in the rural portion of the system being a bi-racial school, except one. During the presentation Dr. Hall raised pertinent questions and responses were made by various members of the staff. Upon conclusion of the presentation Dr. Hall seemed generally to be in agreement with what had been presented. Ultimately Dr. Hall stated that he would assume responsibility to speak for the Office of Education and the Department of H.E.W. in accepting all of the plan except one small portion dealing with the one non bi-racial school, and that he would have to check with his bosses on that question.

Dr. Hall then brought up the problem of including in his report a section regarding the terrific imposition placed

upon school systems which are asked to administer new organizational plans approved by the Court only a short time before the opening of a given school term. I encouraged this idea and pointed out, among other things, that members of the staff and/or the school board would ordinarily meet with members of the local school communities before making any drastic changes which would affect that community, but that the position imposed upon the board and staff by the current Court Order precludes such action.

At the end of the conference a further conference was scheduled for June 25.

On June 25, the further conference was held at the School Board Offices, attended by Dr. Hall, Mr. J. J. Jordan of the Atlanta Office of the Office of Education, H.E.W., and several members of the staff. The discussion began with consideration of the problem involving the one school in the rural portion of the system that had presented a problem in the previous discussion, and Dr. Hall indicated that he could not accept any recommendation which included this school as an all negro school. He went further to say he did not feel that it was absolutely necessary to eliminate every all negro school, but that in this particular case since he felt it could be done easily, then it would have to be done.

At this point I think it pertinent to note some observations of Dr. Hall's behavior. During the times when we were dealing together without the presence of Mr. Jordan, Dr. Hall was quite agreeable, cooperative, and seemed disposed towards seeking to reach some compromise agreement on most of the points in contention. In the presence of Mr. Jordan however, he presented an entirely different

countenance, was stern, disagreeable, and showed no inclination to try to compromise at all.

Continuing the conference, further discussion was held and it became apparent that the H.E.W. people themselves had done nothing towards the actual development of a desegregation plan, but had been almost entirely engaged in the development of information which was later put forth in the first four chapters of their Report to the Court. I reminded Dr. Hall and Mr. Jordan of the necessity of submitting any agreed plan to the Court, by July 3, and again called to Dr. Hall's attention, as I had done before, that I had plans which would take me out of the city beginning June 28 (Saturday), and strongly urged them to make every effort to have their work completed in time for review at a further conference on Friday, June 27.

At this point I brought up the subject of money which would be needed to pay administrators and other staff personnel to come back to work before their contracts commenced in mid August, in order to prepare for implementation of the new plan. Because of budget limitations the board is not in position to supply money for this purpose. I advised them that I had written to the Office of Education in Atlanta concerning the possibility of funds to fill this gap and had been informed that no funds were available. Mr. Jordan stated that possibly some money for this purpose may be available, but he could give no assurance of this. As of this date we have not been able to arrange for any such funds. Dr. Hall raised the question of whether or not money would be available to purchase buses if the plan which will eventually be ordered implied the necessity for

a substantial increase in the amount of busing in the system. I advised Dr. Hall that we had no money available for such purpose and Mr. Jordan advised that no money would be available from the Office of Education.

We then turned to a consideration of steps to be taken in the metropolitan or city portion of the system. I advised Mr. Jordan and Dr. Hall of the following things.

I advised them that the board and staff are not opposed to integration of the school system, but that we want to operate the system in a way that is educationally sound, administratively practical, and is fair to all of the students; that we do not want to return to the point to where we will be operating the system on a racial basis. Dr. Hall seemed to concur in this idea generally.

I advised them that in our opinion, generally, school children, and particularly elementary children, should be left in a school which is geographically near their home and to which they have access with the least amount of danger from traffic and other hazards. I then pointed out that there will inevitably be many school districts which when serving the children of the area or community, will be almost entirely white or entirely negro; and that no amount of gerrymandering of lines would produce a higher degree of integration without resorting to a massive transportation program, to which we are basically opposed. I then pointed out that zones have to be drawn in such a way that school population would relate to facilities which are available and that all zones are interrelated both horizontally and vertically. Reference was had further to the need of relating attendance areas to traffic patterns and existing

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city bus transportation routes and numerous other factors affecting the arrangement of attendance areas. I also presented strongly the need to take into account the needs of special education students, and some reasonable transfer provision non-racial in character.

The conference concluded with arrangements to meet in conference again on Friday, June 27. Dr. Hall mentioned that two additional people, whom he referred to as experts in drawing attendance lines, would attend the Friday conference with them. With this the conference was concluded.

The following day, June 26, I was advised by Dr. Hall that he and the H.E.W. people would have to cancel the conference scheduled for Friday, June 27. He gave no explanation. At a later time, when I had occasion to attend the taking of the sworn deposition of Dr. Hall in the office of the School Board Attorney on July 15, 1969, I found the reason why it was necessary for Dr. Hall to cancel the conference. Dr. Hall stated in response to questions by the School Board Attorney that the decision with reference to the details of the desegregation plan, and the arrangement of attendance areas contained in the H.E.W. recommendations was a cooperative undertaking among Dr. Hall, Mr. J. J. Jordan, and the two so called experts, a Dr. Weincoff and a Dr. Stolee; that Dr. Weincoff did not arrive in Mobile until Thursday afternoon (June 26) and Dr. Stolee did not arrive until Thursday night (June 26); and that all of this work was done by the four of them Thursday night, Friday and Friday night (June 27).

During the course of his deposition testimony Dr. Hall also revealed that after this work was done on Thursday

and Friday he went to New Orleans to meet with Dr. Gregory Anrig, who was Mr. Jordan's superior in Washington, and who had to review the work, and that this was done in New Orleans on June 29.

A further conference was arranged in the School Board Offices for Tuesday, July 1. The conference was attended by Dr. Hall, Mr. Jordan, myself, Dr. Cranford Burns and other members of the staff. The purpose of the conference was to give the H.E.W. people an opportunity to present their plans for the school system. This was done by Mr. Jordan and he pointed out that two consultants were used in the drawing of the district lines, but he refused to identify them. Later during the course of the deposition previously referred to I found out that it was Dr. Stolee and Dr. Weincoff.

Upon viewing the plan I immediately raised questions concerning the number of schools being closed, the apparent mass transportation being required, the use of facilities for purposes for which they were not designed, and the creation of so called complexes which immediately appeared to me to be unworkable. Mr. Jordan responded by saying that their plan would call for a rather extensive program of renovation and substantial busing. He also indicated that he did not know if the busing would be legal, and that if not the plan would have to be reworked.

Mr. Jordan then stated that he felt sure the professional staff of the Mobile School System could devise a better plan than the one that he had proposed, but that what he had seen so far was not satisfactory and he felt it the responsibility of H.E.W. to make some kind of proposal at least as a point of departure. I pointed out to Dr. Hall and Mr.

Jordan that the H.E.W. plan as presented was totally and completely unacceptable in whole and in part to the professional staff and no doubt the school board would feel the same. Mr. Jordan responded by saying that the board had nothing to gain by accepting this plan because the Court will order a plan anyway. Dr. Hall commented that at first glance, the overall plan may not be very appealing but that with study and reflection the plan "grows on you".

In concluding the conference I asked for copies of the maps and other material prepared by H.E.W. and they declined to give me copies of the same. Copies were obtained later on when the H.E.W. report and recommendations were filed with the Court.

Ultimately no overall agreement was reached between H.E.W. and the School Board on a desegregation plan to be filed with the Court. Thereafter, H.E.W. filed its recommended plan in the Court, and a copy has been delivered to me. I have reviewed the same and find that it is essentially the same plan they had presented to me in conference as a suggested compromise. It appears from this that what they presented to us as a proposed compromise was not really an effort to compromise but a presentation of their recommendations which they sought to have the School Board agree upon, lacking in which they intended to file the same with the Court as their recommendations all along.

I have now carefully and thoroughly reviewed the proposed desegregation plan and other materials submitted to the Court by H.E.W. I have been asked by the School Board Attorney to provide an evaluation of this material, and I am setting out such an evaluation hereafter.

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My evaluation of the recommendations submitted by H.E.W. to the District Court is that as a whole they are totally and completely unsound educationally, and they are incapable of effective and proper administration. It is my opinion that the implementation of this plan of operation of the school system would not be in the best interest of the school system, would not be consistent with the best interest of a majority of the citizens of the county, negro or white, and would not be consistent with the best interest of a majority of the students in the school system, negro or white. It is my further opinion that if these recommendations should be accepted and ordered for implementation as the method of operation of the Mobile County Public School System, it would do substantial harm to the school system; and I see within these recommendations the foundation for the likely destruction, in whole or in part, of public education in the county.

By educationally unsound, I simply mean that the recommendations contain many proposals and procedures which are not based upon sound educational policy. The plan is literally filled with examples of this but one striking example will suffice at this point. Hillsdale Heights School is proposed as a one grade school, to house only eighth grade students from almost the entire western section of the city of Mobile. Such a proposal is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend such a procedure, unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

By stating that the recommended plan is incapable of effective and proper administration, I simply mean that

as a professional school administrator with substantial experience in this school system, I do not feel that the plan recommended by H.E.W. could be effectively administered; because of the numerous departures from sound educational practice as well as because of the numerous departures from sound administrative procedure and because of numerous apparent inaccuracies in the statistical data that forms the basis for the recommendations.

The desegregation plan contained in the H.E.W. recommendations is obviously a hastily contrived hodgepodge prepared by someone who has no real familiarity with the subject with which he was dealing, and designed for the specific purpose of obtaining a maximum placement of negro students in schools with white students and vice versa, while totally subordinating and in many cases completely ignoring all other relevant factors except the assumption, to which I do not subscribe, that the mere physical placing of negro children and white children in school together will improve the quality of education for all, irrespective of all other factors.

This is my general criticism of the H.E.W. recommendations. I will now point out a number of specific criticisms all of which fit together, along with many others which I will not comment upon because of limitations of time and space, to form my general opinion that the plan as a whole, and in each major segment thereof, is educationally unsound and totally incapable of effective and proper administration. First, I will outline these criticisms without lengthy explanation; then I will come back and comment in more detail.

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1. The H.E.W. recommendations require financial expenditures quite in excess of the capabilities of the school system, in order to meet their requirements with reference to busing of students and other aspects of the recommendations.

2. The H.E.W. recommendations require the closing and abolishment of a number of schools in the city portion of the school system resulting in: the loss of use of adequate school facilities while at the same time overcrowding other school facilities, crosstown busing of large groups of students thereby forcing young children to attend schools far removed from their neighborhoods, the dissipation of the neighborhood school concept with reference to the schools affected.

3. With reference to the crosstown busing of large groups of students in the city portion of the system, the H.E.W. recommendations result in: drastically increased expense, the overcrowding of some school facilities, the forcing of young children to attend schools far removed from their own neighborhoods, the dissipation of the neighborhood school concept, and the lessening of the desire and ability of students and parents to develop essential support for neighborhood schools as a center of the community.

4. The H.E.W. recommendations depart from any reasonable concept of organized grade structure, resulting in haphazard grade structure and in some instances one grade schools.

School Board Affidavit, Filed July 29, 1969

5. The H.E.W. recommendations create so called school complexes, which are in fact not complexes and impose insurmountable administrative problems.

6. The H.E.W. recommendations are based upon and require substantial gerrymandering and create completely absurd school attendance areas with apparent total disregard for safety factors, accessibility, transportation routes, manageability, and many other factors normally taken into account in the creation of school attendance areas.

7. The H.E.W. recommendations result in a total rejection of the neighborhood school concept, in disregard of all traditional educational principles which go with the neighborhood school concept.

8. The H.E.W. recommendations require the use of many school plants in a manner for which they were not planned, designed and constructed.

9. The H.E.W. recommendations make the implementation of an adequate curriculum impossible in many schools; particularly the one grade schools created thereby.

10. The H.E.W. recommendations obviously result in attendance area lines drawn on a racial basis rather than a non-racial basis.

11. Under the H.E.W. recommendations the possibility of conducting many extracurricular activities is destroyed or substantially weakened.

School Board Affidavit, Filed July 29, 1969

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School Board Affidavit, Filed July 29, 1969

12. The H.E.W. recommendations fail to make any provision whatsoever for the needs of special education students.

13. The H.E.W. recommendations make no provision for transfer for good cause, non-racial in character.

14. With reference to student assignment the H.E.W. recommendations are based entirely on statistics which we have found, upon cross checking, to be inaccurate from the standpoint of the matching of students with facilities. This presents a critical administrative impossibility.

Purely from the practical standpoint, I disagree with the recommendations because to fully implement them would require an initial increased expenditure of capital outlay funds for renovation, addition and conversion of school facilities to meet the usage proposed by the plan, in an amount approximating $12,575,200.00; realizing that this money is not available and will not be available in the foreseeable future; and the recommendations make no provision for this monetary deficiency.

Along the same line, the H.E.W. recommendations call for the closing of a number of schools in the city portion of the system and the housing of these students at schools far removed from their places of residence, and calls for the accomplishment of this by mass transportation of these students. To implement the H.E.W. recommendations would require the acquisition of an operation of eighty-four new busses in the city portion of the school system. Initial acquisition costs would be $457,672.30 and operational cost

for one year would be $131,980.80 for a total expense for the coming year of $589,653.12, and a recurring yearly expense each year thereafter of $131,980.80. In addition the H.E.W. proposal would necessitate the acquisition of an additional ten busses for use in the rural portion of the system for an additional expense the coming year of $70,196.30 and a recurring additional operating expense each year of $15,712.00. As with the expense of addition, renovation and conversion previously referred to, the H.E.W. recommendations, while necessitating such expense, make no provision for the money to cover the expense other than suggesting that which we know to be available from the State Department of Education, which would cover only a minute portion of this total cost. I specifically inquired of the H.E.W. people about Federal financial assistance in this regard and was advised that there would be none.

In a like manner, there would be a loss in money value of over $4,000,000.00 to the school system as a result of the closing of the six schools (Toulminville, Calcedeaver, Howard, Caldwell, Emerson and Calvert) as recommended by the H.E.W. proposal.

I have attached hereto, marked Attachment A, information prepared by our staff setting out these figures in somewhat more detail.

I disagree with the H.E.W. recommendations because they require the closing of neighborhood schools in favor of busing these students across town, great distances. This is particularly undesirable in this instance because a substantial number of the children affected are young elementary school children. Such an arrangement is basically

unsound. In this instance it also results in drastically increased expense to the school system as already referred to. It results in the closing of permanent facilities and the housing of these students, or others whom they displace, in temporary facilities at the schools to which they are transported. It results in the destruction of neighborhood schools. I do not think it desirable to move young children from their neighborhoods where they are familiar with the surroundings to distant neighborhoods and schools where they are unfamiliar with the surroundings and develop a feeling of insecurity. In addition to psychological problems the mere physical distance involved creates a number of problems and hardships for the students and for their parents.

I disagree with the H.E.W. recommendations because of the fact that they work in many ways, busing included, to destroy the concept of neighborhood schools. It is impossible for students to identify fully with school centers far from their familiar surroundings. It makes it impossible for parents to identify with the school center; and it leads to destruction of the school as a strong force in the development of such activities as Parent-Teacher Associations, Scouting Programs and many other extracurricular activities. Under the H.E.W. recommendations the important role that the neighborhood school plays in the life of the community is for the most part effectively destroyed.

For the same reasons, a number of recommendations in the H.E.W. proposal are at least as objectionable as the crosstown busing. The proposal recommends the formation of so called "complexes" involving a number of schools. An example is the Sidney Phillips, Booker T. Washington,

Fonvielle "complex". Under the H.E.W. proposal these three schools would be operated as one junior high school, with every student having to pass through each of the three school centers in the complex during his years of junior high school attendance. There are many problems associated with this specific proposal which make it totally unfeasible from an administrative standpoint. From the educational standpoint it presents grave difficulties in the development of an adequate curriculum, the development of student faculty relationships, the development of extra-curricular activities, the access of students, and many other problems.

A good portion of the H.E.W. proposal is based upon a series of artificial arrangements of schools and students. Several one grade schools are called for. This is so unsound from the educational and administrative standpoint as to be obvious to anyone. Latitude in the development of curriculum is completely limited. Student identification with the school and the opportunity for development of faculty student relationships is thwarted. Important extra-curricular activities and Parent related activities are destroyed.

The H.E.W. proposal is totally devoid of any concept of organized grade structure, resulting in haphazard grade structure arrangements and in some instances, as previously referred to, one grade schools, and other equally impractical defects.

As a result of this sort of situation, under the H.E.W. proposal many students would attend as many as six different schools by the time they reach the 10th grade.

School Board Affidavit, Filed July 29, 1969

The H.E.W. proposal contains arrangements of attendance areas prepared by someone who obviously had no knowledge of or concept of the significance of natural barriers such as railroads, major thoroughfares, transportation routes, creeks and streams, bridges, or the lack thereof, commercial and industrial centers and other factors. A close examination of the H.E.W. proposal and the maps included therewith indicates that in many, many instances the attendance area boundary lines are poorly placed and do not take these necessary factors into account.

In numerous instances the H.E.W. proposal calls for the use of various school plants in a manner for which they were not planned nor constructed, and therefore do not contain the necessary or proper facilities. I have previously referred to the expense that would be involved in converting these facilities to the use proposed by the H.E.W. recommendations. If they are not converted it would result in thousands of students attending schools where the facilities are totally and completely inadequate, for example; high school students attending school in elementary school facilities where there are no gymnasiums, laboratory facilities, etc.

As near as I have been able to determine from my review of the H.E.W. proposal it makes no provision whatsoever for the needs of special education students (students requiring special facilities, special classes and special instruction, due to mental deficiency or other circumstance).

The H.E.W. proposal does not contain a provision for transfer for good cause, without regard to race. Such a provision is necessary for the effective operation of any

school system and a failure to include the same in the proposal for the operation of the school system indicates either total ineptness from an educational standpoint or amazingly callous disregard for the students of the school system.

After a thorough review by our staff it appears that the H.E.W. recommendations are incapable of administration as a whole, if for no other reason, because they simply are statistically inaccurate. We have found in a number of instances that the tables and statistics shown in the proposal are inaccurate, and that a number of schools, if operated upon the basis recommended by H.E.W. would be overcrowded by hundreds of students; in one instance (Eanes-Woodcock Complex) by as many as 900 students. At the same time, many other schools would be underpopulated; in one instance (Mobile County Training School) by as many as 930 students. In other words, the H.E.W. proposal results in a mismatch or unbalance of students with relation to facilities; so much so, that an attempt to operate the schools on the basis of the proposal would literally mean chaos from that standpoint alone. It is difficult to determine if these inaccuracies resulted from lack of information, lack of skill, lack of concern, neglect, or design.

In seeking to evaluate the H.E.W. proposal we found that many geographic boundaries are not clearly identifiable. In order for any plan to be workable it must be a plan that can be understood and the geographic boundaries in the plan must be clearly identifiable by the staff and by the community. In many instances the H.E.W. plan contains boundaries which simply cannot be identified or pinned down. An example of this is where boundary lines separating the Murphy and the Williamson-Craighead

areas extends haphazardly through the middle of two subdivisions, Rosswood and Brookwood. Another example of this same kind of a problem appears in the rural area. The H.E.W. plan calls for the dispersal of sixth grade students in the Davis area to Griggs and Burroughs and Hollingers Island, but *no* boundaries are given to indicate, either to professional staff or to the community, which sixth graders in the area would go to which school. This compounds confusion and frustration for both the community and the staff.

The H.E.W. proposal in the metropolitan area calls for a two phased implementation. The difficulty here is that it is not clear which phase is which. For example: The H.E.W. plan says that recommended changes east of the Belt Line will not be effective until September of 1970, except for the transportation of part of the Toulminville students. It recommends, however, that children in the Emerson and Fonvielle areas be transported to schools which are west of the Belt Line. Clearly this is a change in school attendance which affects areas which are both east and west of the Belt Line. In this kind of situation the plan does not make clear whether this change is to be implemented in September, 1969 or September, 1970. Another example of this confusion can be found in the middle school plan where the Phillips, Fonvielle, Washington attendance area takes in portions of the city which are both east and west of the Belt Line. It is not clear how the Phillips, Washington, Fonvielle complex plan could be implemented for those students west of the Belt Line in September, 1969, while at the same time it was *not* implemented in Sep-

tember, 1969 for students in that area who are east of the Belt Line. In other words, there are instances where the H.E.W. plan affects children, some of whom live east and some of whom live west of the Belt Line, and it sets out no recommendations as to how this kind of problem can be resolved. Similar difficulties would occur in the Vigor-Blount complex, in the Hamilton-Robbins area, and in other areas.

The H.E.W. plan includes provisions for the pairing of several schools (in one case a triumvirate is set up in which three schools will somehow serve one area. The ultimate example is the Prichard quadruple complex). In any of these instances where multiple facilities are to serve one area and particularly when the schools involved are geographically widely separated, there are many administrative problems which would have to be resolved. For example, in the case of the Arlington-Council complex, children living in that area are to attend grades 1-5. The H.E.W. plan does not spell out what kind of arrangement is to be set up with respect to grade levels. It would be possible to put the first and second grade at one school and the third through the fifth grades in the other, or put the first and second grade at one school, the fourth and fifth at the other with both schools having a third grade. If it happens to be the case that the grades cannot be distributed disjointly between or among the schools involved, then the question arises as to what to do with the extra grade—that is, how it will be decided which school children will attend which school if both schools serve the grade to which they are assigned. This would lead to confusion for parents as well as for school officials. The only concrete sug-

gestion made for this kind of situation is that a child living in one of these areas should attend all the schools serving that area for at least one year each during the time which he resided in that area and is assigned to a grade served by the particular complex. This is unsound by any standard.

Another difficulty which the H.E.W. plan will cause in these paired school areas will be the actual administration of the school when the campuses are geographically separated.

Three years ago the Board of School Commissioners adopted a 5-3-4 plan of school organization. Since that time as facilities and circumstances have permitted, we have moved toward this goal in the organization of our schools. The plan, as proposed by H.E.W., particularly in the metropolitan middle school area, will have the effect of moving us away from this plan. Although since the adoption of the Board's policy we have not been able to entirely implement the 5-3-4 plan, I feel that any recommendation which moves away from this goal will be detrimental to the overall educational process, unless this move is based on other sound educational principles. What principles H.E.W. used as a basis for moving away from this organizational pattern escapes me entirely.

The H.E.W. proposal substantially lessens articulation and the opportunity to develop adequate curricula. Articulation under the H.E.W. plan will be a great deal less than is satisfactory from an educational standpoint. Development of curricula is restricted by a number of factors including insufficient articulation and numerous other factors such as the existence of one grade schools and the haphazard grade structure included in the H.E.W. plan.

School Board Affidavit, Filed July 29, 1969

There is another most important factor which was apparently overlooked completely by those who developed the H.E.W. recommendations; the future. The H.E.W. proposal is devoid of any consideration for the future. As far as I have been able to determine from examination of the H.E.W. report, the services of the Housing Board and of the City Planning Commission were not utilized or considered in making the recommendations. In his deposition testimony, Dr. Hall admitted that they were not. Expected residential growth in the downtown area as a result of urban renewal projects apparently had no effect on the H.E.W. recommendation in this area. Specifically, a number of schools in urban areas, where population increase is expected, are closed under the H.E.W. proposal. Among these schools are: Emerson, Caldwell, Howard and Toulminville.

Again, I must reiterate that the recommendations submitted to the Court by H.E.W. are as a whole, and in each segment thereof, educationally unsound and incapable of effective administration; any attempt to implement them in the operation of the school system will do substantial and lasting harm to the school system and to all students who must utilize it, negro and white alike.

JAMES A. MCPHERSON

School Board Affidavit, Filed July 29, 1969

ATTACHMENT A

Page 1

MOBILE COUNTY PUBLIC SCHOOLS

ESTIMATED CONSTRUCTION AND RENOVATION COST AS PROPOSED BY THE HEW STUDY FOR MOBILE COUNTY

Conversion and Addition Cost:

Vigor-Blount	$ 4,600,000.00
Williamson-Craighead	1,500,000.00
Sidney Phillips-B. T. Washington	1,901,200.00
Woodcock-Mae Eanes	2,100,000.00
Burroughs	1,400,000.00
Hillsdale	680,000.00
Dunbar-Central	394,000.00
Total	$12,575,200.00

Cost of Buildings to Be Closed:

Toulminville	$ 1,428,400.00
Calcedeaver	423,200.00
*Howard	516,800.00
Caldwell	739,100.00
*Emerson	890,000.00
Calvert	123,900.00
Total	$ 4,121,400.00

* These buildings to be replaced with new buildings.

School Board Affidavit, Filed July 29, 1969

ATTACHMENT A

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY
MARYVALE SHOPS
TRANSPORTATION DEPARTMENT

July 9, 1969

ESTIMATED COST TO OPERATE AN ADDITIONAL 84 BUSES DURING THE 1969-70 SCHOOL TERM

GRADES 1 through 5

SCHOOL	NO. OF BUSES
Maryvale	2
Morningside	2
Kate Shepard	2
Herts	2
Fonde	3
Westlawn	1
Austin	1
John Will	3
Forest Hill	5
TOTAL	21

GRADES 6 through 9

SCHOOL	NO. OF PUPILS	NO. OF BUSES	GRADE
Hillsdale	914	15	8th
Scarborough	600	10	6th - 7th
E. J. Clark	240	4	8th
Prichard Jr. Hi.	65	1	6th - 7th
Mobile Co. Trng.	125	2	6th - 7th
Sidney Phillips	70	1	6th - 9th
Dunbar (Central)	600	10	6th - 9th
Woodcock	360	6	6th - 9th
TOTAL		49	

GRADES 9 through 12

SCHOOL	NO. OF PUPILS	NO. OF BUSES	
Davidson	540	9	Students from the
Shaw	305	5	Toulminville area
TOTAL		14	

The above figures are based on 60 passenger buses with 60 pupils to each bus.

Cost to operate bus without cost of driver ——— $ 396.20
This figure is based on the cost to operate the 1968 model buses during the 1968-69 school term.
Cost of Driver ——— 1,175.00
TOTAL ESTIMATED COST TO OPERATE ONE BUS $ 1,571.20 x 84 Buses = $131,980.80

PURCHASE PRICE OF ONE BUS $ 5,448.43 x 84 Buses = $457,672.32

TOTAL ESTIMATED COST = $589,653.12

ATTACHMENT A
Page 2.

School Board Report to the Court, Filed October 13, 1969

The August 1, 1969 Order of this Court requires that the School Board file with the Court, not later than December 1, 1969, a further suggested desegregation plan for all schools located east of I-65. The order also requires that a report of progress in this regard be filed on October 10, 1969. This is the October 10, 1969 progress report.

This Court's August 1, 1969 order required an almost complete reorganization of the entire rural portion of the school system and major changes in the metropolitan portion of the system; all within approximately 30 days. This made unusual and excessive demands of time and effort upon the professional staff of the school system following the August 1 order, throughout August, and continuing through the opening of school in September.

With the opening of school, demands of time and effort were increased and intensified due to extensive dissatisfaction and unrest in the community as a result of implementation of the August 1 Order. This dissatisfaction and unrest has manifested itself in numerous ways including pickets, boycotts, student sit-ins, an exceedingly large number of transfer requests, public gatherings, confusion, threats, etc. This court is already aware of many of these things.

As a result, the Board and Staff have been unable to apply more than preliminary effort towards developing a new desegregation plan for metropolitan schools east of I-65. Within recent days there have been indications of a general abatement of confusion and unrest. Unless there should be a reversal of this new trend, the staff should be able to apply more productive effort to this task within coming weeks, to the extent that the board should be in position to make a more detailed progress report on or before November 20, 1969.

School Board Report to the Court, Filed November 20, 1969

The August 1, 1969 Order of this Court requires that the School Board file with the Court, not later than December 1, 1969, a further suggested desegregation plan for all schools located east of I-65. The order also requires that reports of progress in this regard be filed on October 10, 1969, and November 20, 1969. The October 10 report was filed on that date. This is the November 20 report.

This Court's August 1, 1969 order required an almost complete reorganization of the entire rural portion of the school system and major changes in the metropolitan portion of the system; all within approximately 30 days. This made unusual and excessive demands of time and effort upon the professional staff of the school system following the August 1 order, throughout August, and continuing through the opening of school in September.

With the opening of school, demands of time and effort were increased and intensified due to extensive dissatisfaction and unrest in the community as a result of implementation of the August 1 order. This dissatisfaction and unrest manifested itself in numerous ways including pickets, boycotts, student sit-ins, an exceedingly large number of transfer requests, public gatherings, confusion, threats, etc. This court is already aware of many of these things.

As a result, the Board and Staff were for some weeks unable to apply more than preliminary effort towards developing a new desegregation plan for metropolitan schools east of I-65. Within recent weeks the professional staff have however been able to turn their attentions to the development of the new plan.

School Board Report to the Court, Filed November 20, 1969

First, there was a thorough review and restudy of the material submitted to the Court by HEW as its suggested desegregation plan prior to the Court's August 1 Order. This restudy revealed that the plan suggested by HEW was more educationally unsound, administratively unfeasible and generally objectionable overall than had been first thought when it was submitted by HEW to the Court.

Next, there was an assessment and evaluation of the impact of this Court's August 1, 1969 Order, and the implementation of that order, on the school system. It was found that implementation of the order had resulted in numerous undesirable effects, including the apparent withdrawal of several thousand students from the system.

Next there was a review of suggested desegregation plans heretofore filed in this Court by the Justice Department and by Counsel for the plaintiffs; and plans heretofore filed by the School Board.

Drawing upon information and knowledge resulting from the review procedures described above, and upon their general knowledge, the staff then set about efforts to discover and develop a comprehensive desegregation plan for the schools east of I-65. This effort is still in progress, but no comprehensive plan is yet available for recommendation to the Court.

The Court should be advised that these efforts described above have served more and more to convince the staff that the most feasible plan for the operation and desegregation of all secondary schools in the metropolitan area (both east and west of I-65) is a system of student assignment based on free choice of schools by all.

District Court Order of January 22, 1970

Application for intervention as parties defendant, filed on July 29, 1969 by the Mobile County Council of Parent-Teacher Associations and Mrs. Eugene Gibbons, Robert R. Williams, Odie Williams, Mrs. Frances D. Bridges, James T. Hammer, Jr., Mrs. J. L. Kittrell, John J. Hackmeyer, K. H. Williams, William E. Deneke, Mrs. Irvin G. Rentz, Mrs. Warren M. Banta, Jr., Ruth Merwin, Thomas L. Griffin, W. A. Kimbrough, Jr., James F. Hurd, Edwin M. Johnson, Mrs. B. L. Gilbert, Mrs. O. L. Wilson, Jr., H. B. Young, Mrs. James R. Strange, Samuel W. Jenkins, Mrs. Patsy T. Stinson, W. M. Flannagan, Sr., Marie T. Clotfelter, Mrs. Charles H. Durham, W. S. Van Langingham, Glendean R. Harrison, Charles S. Harrison, and Mrs. Jean Hooker, on behalf of themselves and all others similarly situated, being considered by the Court, is hereby GRANTED.

DONE at Mobile, Alabama this the 22nd day of January, 1970.

DANIEL H. THOMAS
Chief Judge

School Board Response to Order, Filed January 30, 1970

Comes now the Board of School Commissioners of Mobile County, and each member thereof, through their attorneys Pillans, Reams, Tappan, Wood and Roberts, and for response to this Honorable Court's Order of January 28, 1970, would respectfully say:

1. The Board, on December 1, 1969, upon the express orders and directions of this Court, filed a revised desegregation plan containing recommendations for steps to be taken toward further desegregation of the schools in the system lying east of Interstate Highway 65.

2. These recommendations were developed over a period of approximately three months. They reflect the expert thinking and best judgment of competent, trained, professional educators who are thoroughly and intimately familiar with the school system. The desegregation plan embodied in these recommendations was soundly conceived and carefully fashioned in order to comply with all legal requirements imposed by the Court; and at the same time to do so in a manner that will be educationally sound, will cause the least possible hardship to the least number of students, parents and teachers, and will present the least possible danger of destruction of or substantial harm to the school system. If there were other recommendations that would accomplish all of these things better and more fully they would have been included as a part of the December 1 recommendations to begin with; but there are none.

3. It should be pointed out that what the Court has now done is to order the Board to attempt to have its pro-

fessional staff to hastily, in a matter of several days, alter and revise the end product of this three months of extensive, careful, analytical work. Such a hasty effort cannot be expected to produce competent results. If we were merely dealing with maps and figures on a piece of paper this would present no problem; but we are not, we are dealing with human beings, children, and the very life of a public school system. The professional staff people indicate that what the Court has suggested calls upon them to violate and sacrifice professional standards and principals that they, as professional educators, hold inviolate, and this they cannot do.

4. In compliance with the order of the Court we would advise the Court that we have carefully restudied our recommendations of December 1, 1969, with a view towards revising them and find that we do not have any revisions to suggest to the Court, except these:

(a) Since the Court now contemplates implementation on February 1, in the middle of a school year, rather than at the beginning of the next school year, provision should be made to allow all senior students the option of retaining their present assignments, if they choose to do so, in order that they may graduate from the schools they have attended all these years.

(b) Some provision should be made to allow the athletic programs now in progress at the various schools to continue until the end of the basketball season.

(c) The second semester of the school year has already begun and students are already in the process of second semester work. The next natural division point in the

school year will be the beginning of the fourth quarter work on April 6, 1970. The Court's Order of February 1 should provide for the transition to be made at the end of the third quarter and before the fourth quarter begins.

(d) The best interest of the school system, and the individual welfare of all of the students in the system, black and white, would best be served by an order that will not call for the reassignment of any student during the remainder of this school year.

5. The professional staff have carefully studied the three alternate proposals filed with the Court by HEW on December 1, 1969, as well as the revised proposal submitted to the Court by the United States Department of Justice on January 27, 1970, as referred to in the Order. Based upon their study and the information furnished to the Board as a result of their study we wish to advise the Court as follows:

(a) Each of these four proposals suffers from the basic defect that it is on the whole educationally unsound and that it is made up of a variety of component parts most all of which are also educationally unsound, individually.

(b) Each of the four proposals reflects clearly the fact that it was devised by someone who has no practical working knowledge of the school system; as well as by someone who either has none of the basic professional and ethical principals of a professional educator, or having them, is prepared to sacrifice them to other considerations foreign to and inconsistent with sound professional ethics and practice.

School Board Response to Order, Filed January 30, 1970

(c) Each of the four proposals is educationally unsound and administratively infeasible to the extent that it could not, either in its present form or with modification, be implemented in the middle of a school year without total disruption of a large part of the school system for a period of several months; and there is considerable doubt if either of these four proposals, could ever be placed into full implementation successfully.

(d) We have pointed out these defects to the Court in detail verbally during the course of the several conferences and we will reiterate this to the Court by written affidavit testimony if the court should so desire.

District Court Order of January 31, 1970

In the Court's order entered in this cause on August 1, 1969, the elementary school of Dauphin Island was closed and the children who would normally have attended that school prior to its closing were transferred to Alba.

After a careful study, the Court is of the opinion that an elementary school should be located on Dauphin Island for children living on the Island at the elementary grade level.

Therefore, it is ORDERED, ADJUDGED and DECREED that such school be immediately established on Dauphin Island and that this Order be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

DANIEL H. THOMAS
United States District Judge

School Board Report to the Court, Filed February 23, 1970

Comes now the Defendant and makes this report to the Court for the purpose of advising the Court of steps taken towards implementation of its Order of January 31, 1970.

A copy of the Order was served upon the Board's attorney on Saturday, January 31, 1970. The Board's attorney immediately conferred with the Superintendent and delivered the Order to him that same day.

A conference was held, attended by the Board, Superintendent and Staff, on Monday, February 2, 1970 at 9:00 A.M. where the Board's attorney presented his interpretation of the decree and steps toward and problems associated with implementation were discussed.

Following this Board-Staff conference the Staff entered into a conference in depth which consumed the remaining part of the morning, the purpose being to examine the problems associated with the Court Order in greater detail and in greater depth; to begin the assessment of jobs which have to be done, department by department and division by division, and to structure these jobs in proper sequence, trying to see how local school activities and systemwide activities could be properly related to each other in such a way as to minimize confusion, conflict and disruptive influences in the total school program. In the meantime steps were taken to get maps produced in sufficient quantity to meet the needs of the school system.

A conference of principals directly affected by the Court Decree was held on Monday, February 2 at 2:30 P.M. The purpose of this meeting was to familiarize principals with the breadth, scope and nature of the decree and with the

several jobs to be accomplished in implementing the decree, particularly jobs which have to be performed at the local school level and to invite questions and suggestions concerning ways and means of carrying out decree with a minimum of disruption in the school system.

On Wednesday, February 4, a second Board-Staff conference was held for the purpose of making a progress report to the Board on investigations made by the administrative staff and to discuss recommendations made by the staff concerning ways and means of reorganizing the schools in conformity with the decree. At this conference a decision was made to call a special Board meeting for Thursday, February 5 in order to consider further the Superintendent's report, and to take formal action with regard to the Court Order.

On Thursday, February 5, the Board meeting was held, at which time the Board passed a resolution authorizing the Superintendent and Staff to fully comply with and implement the Order of January 31, 1970, in accordance with a procedure outlined and recommended by the Associate Superintendent, which recommendation was approved by the Superintendent.

School Board Report to the Court, Filed February 24, 1970

Comes now the Defendant and for the information and assistance of the court, files this Report to the Court.

Statement of SAM H. SHOUT, Assistant Superintendent in Charge of the Division of Administration, Mobile County Public School System:

Concerning the nature and extent of integration in the Mobile County Public School System from the standpoint of factors other than the mere assignment of faculty, staff and students on an integrated basis, I make the following statement, with the understanding that it will be filed with the United States District Court as a Report To The Court.

All services, facilities, activities and programs of the school system are offered and conducted on a fully integrated basis. All services, facilities, activities and programs with regard to each particular school in the system are available to every student of the school without reference to race; and all services, facilities, activities and programs are available as between various schools without reference to the race of the pupils attending the schools. All activities of all schools, such as athletic teams, bands, orchestras, choral programs, clubs and social activities; and all services and programs such as counseling, student governments, honor societies, and other student groups are offered and conducted on a non-racial basis.

No services, facilities, activities or programs have been changed, curtailed or limited due to the races of students. No special waiting periods or other qualifying factors or circumstances have been attached as a qualification to participate in any program or activity due to the race of any

student. All student extracurricular activities, over which the defendant board has control, are conducted on an integrated basis, as are all parent related activities. The P.T.A. (Parent, Teacher Association) organizations of the various individual schools are conducted on an integrated basis; there has been a merger of the previously separate (one formerly negro and one formerly white) P.T.A. councils into one council, and the first president was a negro high school principal.

All schools are treated equally, without regard to the race of the students attending the school or the previous racial background of the school, with regard to the allocation of instructional materials, athletic equipment, facilities, equipment, furnishing, supplies, textbooks, and allocated funds; and courses of instruction are offered on the same basis.

The statements made above have been accurately reflective of the situation since at least 1967. From the standpoint of actual participation in integrated activities tremendous progress has taken place in the desegregation of extra-curricular activities conducted under the direction of the local schools, particularly in the secondary schools. This progress is a compliment to both the white and negro students who engage in the various activities included in the extra-curricular programs and to the teachers and administrators responsible for the organization and supervision of these activities. The progress has been so great that there is now no apparent evidence that any negro student who is now attending what has been a traditionally white school is excluded from any extra-curricular activity, except on

the basis of his ability to meet the normal criteria established for participation by anyone in a particular activity.

It is not only the increase in the number of negro students now participating in extra-curricular activities conducted in traditionally white schools that is significant, but the degree to which the white students have accepted the negro students into such activities. The casual observer could not be unaware of the increasing number of negro students now participating in the bands, chorus groups, school publication staffs and athletic teams and other similar activities in formerly traditionally white schools. It is significant to note the number of negro students participating in the Junior ROTC Programs who have been placed in leadership positions as junior non-commissioned or commissioned officers in these units. These negro students are serving in these leadership positions with dignity and with the respect of the white students who are members of these units in the traditionally white secondary schools.

Less obvious but just as significant in the progress being made in the desegregation of extra-curricular activities are the increasing number of negro students who have been accepted into various honor societies such as the Beta Club and the National Honor Society in the formerly traditionally white schools. All reports indicate that there is an ever increasing number of negro students participating in student council activities and other school sponsored club activities.

This report would be less than complete if it did not point out the influence of the administrative and teaching personnel in the development of a colorless athletic program being conducted in the Mobile County Public School System. It is particularly significant that the composition of

many of the athletic teams in the formerly traditionally white schools has changed to the point that, in some cases, such schools now have predominantly negro teams representing their school in athletic contests. It is noteworthy that all of the formerly traditionally white secondary schools have outstanding negro athletes participating on their athletic teams. There has also been an increase in the scheduling of athletic contests between traditionally white and traditionally negro schools. This occurs both in regular season competition and in tournament competition.

It is the purpose and intent of the Superintendent and staff to continue to insure that all services, facilities, activities and programs of every school are available to every student without regard to race, and to encourage the active participation of all students, without regard to race.

SAM H. SHOUT

School Board Affidavit, Filed January 30, 1970

Comes now the Defendant and files the attached affidavit testimony of James A. McPherson in support of its Response To Order heretofore filed in this court on January 30, 1970.

AFFIDAVIT

STATE OF ALABAMA
COUNTY OF MOBILE

Personally appeared before me the undersigned authority in and for said county and said state, JAMES A. MCPHERSON, who being by me first duly sworn, did make affidavit and say:

My name is JAMES A. MCPHERSON. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I hold the number two administrative position in the school system, ranking immediately below the Superintendent. Prior to assuming this position I was an Assistant Superintendent, in charge of the Division of Pupil Personnel. I have also had a number of years experience in the system in other capacities, such as teacher and principal. As Associate Superintendent I have had the primary administrative responsibility of working with the desegregation process that has been in progress in the school system since 1964. I have testified in the United States District Court, Southern District of Alabama, on a number of occasions in connection with the continuing litigation there concerning this desegregation process. I have been called to testify at various times

by both the plaintiffs and the defendant School Board. My personal and professional qualifications appear fully in the record from these past occasions, consequently, I will not set them out again here.

This affidavit is made specifically for the purpose of submission to the United States District Court as my testimony in connection with the Response To Order filed in that Court by the Defendant on January 30, 1970, and particularly that part of the Response To Order which points out defects in the proposed desegregation plan for the Mobile County School System filed in the District Court by the U. S. Office of Education, Department of Health, Education and Welfare on December 1, 1969. I will hereafter in this affidavit refer to such proposed plan as the *HEW Plan of December 1* or simply the *HEW Plan.*

The HEW Plan of December 1 was prepared by one Ernest S. Bunch, who styles himself Acting Senior Program Officer, Equal Educational Opportunities. I talked with Mr. Bunch on several occasions although he never asked me for information, advice or assistance. My first contact with Mr. Bunch was on November 17, 1969 very shortly after his arrival in Mobile. Prior to coming to Mobile on that occasion he had no prior contact with Mobile or the Mobile County Public School System.

Based upon my discussions with Mr. Bunch and my subsequent review of the HEW Plan he prepared I am convinced beyond any doubt that he had only a very superficial knowledge of Mobile and the Mobile County Public School System. He obviously has no knowledge whatsoever of many, many factors, the thorough knowledge of

which would be essential to anyone who would attempt to formulate a comprehensive plan or system of student assignment with the object and expectation that it should be educationally sound, administratively feasible or, indeed, practically workable. As a result, the HEW Plan of December 1 that he has formulated, is in its entirety, as well as in its various parts or segments, educationally unsound, administratively infeasible and simply will not work. It disregards and will be detrimental to the best interests of the children concerned, black and white alike and would be destructive to the school system.

The HEW plan is really four different plans which Mr. Bunch has labeled Plan A, Plan B, Plan B-Alternative, and Plan B-I-Alternative. Neither of the four plans is based upon original information, study, statistics or research, because Mr. Bunch made no study, conducted no research and gathered no statistics or information. This in fact is conceded in the explanatory preface contained in the plan itself. All Mr. Bunch did was to take statistical data from a previous HEW report dated July 7, 1969, and then rearrange schools and students by juggling statistics in several different ways to come up with his various alternative plans.

Mr. Bunch's Plan A is really not a plan but merely a statement of statistical data reflecting what he understands the presently existing situation during the current (1969-70) school year. It may or may not be of significance, but even this simple statement of statistical data contains several errors, including the fact that many of his capacity figures are inaccurate.

School Board Affidavit, Filed January 30, 1970

Plan B as a whole is unworkable, for numerous reasons, including the following:

The plan purports, according to its own terms, to be based upon certain specific geographic zones, but no maps or other description reflecting or stating the location of the boundaries of zones is included with the plan.

The statistical data upon which the plan is based is outdated and inaccurate. The original statistical data was gathered and compiled by the School Board in September 1968. It is now totally inaccurate. Spot checks made of this statistical information, after the HEW Plan was filed on December 1, 1969, to determine its accuracy and relevancy indicate that in a number of instances such figures as the total number of students living in a given area (an attendance zone, or a part of an attendance zone), or the ratio of black students to white or vice versa, are in error by as much as 50%.

The plan contemplates, and therefore would require, the utilization of a substantial amount of transportation or bussing, beyond the capacity and capability of the School System's transportation system.

The plan contemplates the closing and non-operation of three school facilities. The inaccurate statistics on which these steps are based perhaps may justify such action, but accurate current statistics and projections for the future indicate that these steps cannot be taken.

The plan, as a consequence of its author's (Mr. Bunch) total lack of any knowledge of virtually all practical functional factors about the school system and the City of Mobile, is based upon the assignment of many children to schools where they simply cannot as a practical matter attend because they simply cannot get to the schools. I

have reference to such factors as: accessibility; traffic flow patterns; the routes of city and other commercial bus transportation; safety hazards such as railroad tracks, major thoroughfares, business and industrial areas, narrow streets without sidewalks, and other dangerous areas; and absolute barriers such as rivers, streams and interstate highways with only limited scattered crossing places.

In addition to those factors above which make the HEW Plan B simply functionally unworkable, there are many features of the plan which, while workable after a fashion, are educationally unsound. Some of these features are:

Grade Structure in the junior high and senior high schools is totally unstable. There are eight different structures; 6-9, 7-8, 6-7, 8 only, 7-12, 9-12, 10-12 and 12 only. Within these structures are seven two grade schools and three schools of only one grade each. Such an arrangement is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend it unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

Several school plants are designated for a use for which they were not constructed and to which they cannot be satisfactorily adopted; such as using elementary school buildings for junior high schools (Woodcock, Fonville) and high schools (Bienville, Craighead), junior high school buildings for senior high schools (Carver) and senior high school buildings for junior high schools (Mobile County Training School, Central).

The plan calls for the creation of several so called school complexes, by grouping two, three or even four separate schools together, even though physically they may be

widely separated, and treating them as one large school. For example; (a) the Vigor, Blount, Carver, Bienville High School complex; (b) the Phillips, Washington, Fonville Junior High School complex; (c) the Eanes, Woodcock, Junior High School complex and (d) the Williamson, Craighead High School Complex. These complexes present many administrative difficulties and other serious problems such as unadaptability of facilities (using Craighead Elementary School as half of a high school complex) and the simple inability of students to get to the schools to which they are assigned.

The plan overcrowds many schools and underpopulates others. One example should suffice. The HEW Plan B, according to its statistics contemplates an enrollment of 650 at Prichard Junior High School which has a capacity of 609; whereas accurate current statistics indicate that in the zone Plan B would assign to the school there are actually 1421 students who must attend the school. This means that Plan B has actually assigned 1421 students to a school with a capacity of 609. There are other similar examples. Such an arrangement is simply impossible of implementation.

The Plan makes the implementation of adequate curriculum impossible in a number of schools; makes it impossible to conduct many extra curricular activities; and destroys the very important factor of student and parent identification with the neighborhood school as a center of activity.

The plan virtually destroys the neighborhood school concept.

The plan requires the cross town bussing of many elementary school students thereby forcing the very young children to attend schools far removed from their own

neighborhoods, in unfamiliar surroundings where they inevitably experience insecurity.

I turn now to Plan-B-Alternative. It generally contains the same defects and is subject to the same criticisms as Plan B previously referred to. In addition, upon close examination of the statistical data set out in the plan and a comparison of this data with accurate current data, it is immediately apparent that the statistical data is so grossly inaccurate as to make the plan totally unworkable. This example will suffice to illustrate the point.

The junior high and senior high zones set up by plan B-Alternative are the same zones as were recommended by HEW in its previous report of July 7, 1969, and are reflected in maps attached to that report. The statistical data set out in plan B-Alternative, as well as on the corresponding maps, indicates a total of 1744 students in the zone drawn for Eanes-Woodcock Junior High School Complex (grades 6-9). On the other hand, a current analysis by our pupil personnel division indicates there are actually approximately 2693 students in the zone in grades 6-9. This is an error of over 900 students in the HEW figures. Consider this in light of the fact that the normal capacity of the school is 1760 students and the fatal absurdity of the HEW error becomes apparent. In a similar manner, the statistics in Plan B-Alternative indicate a total of 1291 students in the Mobile County Training School Zone, (in grades 6-7). Whereas, a current statistical analysis indicates that there are actually only approximately 362 such students in the zone. This is an error of over 900 students. In a similar manner plan B-Alternative purports by its statistics to assign 2602 students to the Phillips-Washington-Fonville Complex; whereas, in the

zone drawn in the plan there are actually approximately 3253 students who must attend the complex. This is an error of over 650 students. In a similar manner plan B-Alternative purports by its statistics to assign 2606 students to the Dunbar-Central Complex, while in actuality there are only 2214 students in the zone drawn in the plan; an error of almost 400 students. These same errors are also found in Plan B, as well as in Plan B-Alternative.

There are other similar errors in plan B-Alternative, all of which combine to make the plan impossible of implementation.

I turn now to plan B-I-Alternative. This plan apparently pertains only to elementary schools. It is subject to the same general criticisms already stated, and it contains similar statistical errors, resulting from the fact that the entire plan is based on outdated, inaccurate statistics. It is to me the most objectionable of all of the several plans, because it would require massive cross-town bussing of young elementary school children (the exact amount we are not certain, but approximately 14,000 students in grades 1-5 each year) and because it would shuffle these young children from school to school allowing them to remain in each school for only one or two years, or sometimes three years, at the most. Both of these features are educationally unsound.

Purely as a practical matter, this plan could not be implemented because it is founded on a statistical basis which is inaccurate. There are other practical defects; for example, no provision at all is made for the approximately 100 sixth grade students residing in the South Brookely zone.

School Board Affidavit, Filed January 30, 1970

All of these errors and defects combine to make plan B-I-Alternative educationally unsound, administratively infeasible, and totally unworkable.

A further important factor not accounted for in the HEW plans, and apparently not even considered, is the financial factor. Implementation of the HEW plans would result in the following costs and expenses to the school system, according to a study made by the professional personnel of the Business Affairs Division:

1. Cost of additions to and conversion of school plant facilities in order to meet changes of use and changes of enrollment required in the various HEW plans, $10,495,200.00.

2. Loss of value of buildings and sites to be closed and abandoned, or at least not used, according to requirements of the various HEW plans, $2,145,900.00.

3. Acquisition cost of new busses in order to meet the additional transportation required by the various HEW plans:

Plan B	— $321,457.37	(59 busses)
Plan B-Alternative	— $206,932.74	(38 busses)
Plan B-I-Alternative	—$1,269,484.19	(233 busses)

4. Recurring yearly expense, for operating each year the additional busses required to meet the additional transportation required by the various HEW plans:

Plan B	— $ 92,700.80	(59 busses)
Plan B-Alternative	— $ 59,705.60	(38 busses)
Plan B-I-Alternative	— $366,089.60	(233 busses)

School Board Affidavit, Filed January 30, 1970

The school system simply does not have the capability of meeting these increased costs and expenses, whether it be a matter of immediate or future cash outlay, or the absorption of a loss due to the closing of facilities.

The HEW plans apparently make no provision whatsoever for special classes to accommodate the several hundred exceptional (slow, retarded, handicapped, etc.) students in the system who require special classes, teachers, and arrangements. This is most unfortunate.

The HEW plans are totally devoid of any consideration for the future. As far as I have been able to determine from examination and study of the HEW plans, the services of the Mobile Housing Board and the City Planning Commission were not utilized or considered in developing either of the three alternative plans. The original source material from which the plans were developed was prepared by HEW representative Dr. Joe Hall in connection with his previous report of July 7, 1969. In his deposition testimony Dr. Hall admitted that these agencies were not consulted. As a result, expected residential growth in the downtown area is not allowed for in the HEW plans; on the contrary, rather than allowing for anticipated growth, the HEW plans would unwisely close schools in this area.

After a close and careful study of all of the several different plans submitted to the District Court by HEW on December 1, 1970, it is my firm opinion that all of these plans are, as submitted to the court, educationally unsound and administratively infeasible; and that they are based upon statistical data which is to a large extent inaccurate, or at least it is inaccurately stated in the plans, so that the plans are incapable of effective implementation.

School Board Affidavit, Filed January 30, 1970

I have had occasion to examine a copy of a document given by counsel for the United States Department of Justice to the District Court in conference on January 22, 1970; the document is entitled Projected Enrollment Changes between 1969 and 1970. I have examined the document and have compared the figures contained therein with information gathered and maintained on a current basis by the professional educators and statisticians of our Pupil Personnel Division. Based upon this study and comparison, it is apparent to me that the projections and figures put forth in that document in the columns labeled HEW plan B, HEW plan B-Alternative, and HEW Plan B-I-Alternative, are based upon old, outdated statistical data and that they are inaccurate.

I participated in the development and preparation of the revised desegregation plan submitted by the School Board to the District Court on December 1, 1969. I am aware and here state that during this process a conscientious effort was made to increase the extent of integration in the school system and to create a unitary school system. In comparing this plan with previous plans filed by the Board or ordered by the Court it is immediately apparent that many of the zones, particularly in the elementary schools, are substantially similar. This results from a recognition by professional educators of the educational soundness of the neighborhood school concept, as well as the practical necessity of developing zones and boundaries with due regard to a multitude of purely practical factors such as capacities of schools, size of zones, the location and density of population, accessibility, traffic flow patterns, the routes of commercial transportation, the location of railroad tracks, ma-

jor thoroughfares, business and industrial areas, the nature and condition of routes of travel, other safety hazards and barriers such as rivers and streams and interstate highways. The fact that the zones are similar however, cannot be taken to mean that they are the same zones from the racial standpoint, because the population in the area of the county where the zones here concerned are located is to a large extent of a transitory nature to begin with, plus the fact that most of this area is undergoing a subbstantial and rapid overall ethnic change. Therefore, a zone previously drawn in a particular manner in order to avoid integration could now be drawn in the exact same manner and yet create or increase the extent of integration.

I have also had occasion to examine and study the desegregation plan set forth by the District Court in its order of January 31, 1970, and the statistical data being prepared by the professional educators and statisticians of our Pupil Personnel Division based upon the contents of that plan. From this examination and study, it is apparent to me that the statistical extent of integration is larger and more extensive under the court ordered plan than under the proposed revised plan filed by the Board on December 1, 1969. In studying this plan it is apparent to me that the court devised it with the conscious intent of increasing the extent of integration and creating a unitary school system.

/s/ James A. McPherson
James A. McPherson

School Board Motion for Stay, Filed March 17, 1970

Comes now the Board of School Commissioners of Mobile County and files this Motion For Stay and would respectfully show unto Your Honor as follows:

I.

Pursuant to 28 U.S.C. 2201, and such other statutes or rules of law as may be applicable, Petitioner, the Board of School Commissioners of Mobile County, is preparing an action to be filed as soon as possible in this Honorable Court calling upon the court to construe, determine and declare the constitutionality of the law recently enacted by the Legislature of the State of Alabama, a true copy of which is attached hereto, marked Exhibit A.

II.

Petitioner is a public body corporate and an agency of the State of Alabama, and is by law invested with the power and responsibility of operating the public schools of Mobile County, Alabama.

III.

Heretofore, on January 31, 1970 this court entered an order by which it required the Petitioner to undertake and carry out a reorganization of attendance zones and a reassignment of students in a portion of the Public School System of Mobile County. A copy of this order is attached hereto, marked Exhibit B. In order to comply with the terms and provisions of this order, Petitioner will of necessity be required to assign particular students to attend particular schools on account of their race, and will be required

to assign particular students to attend particular schools for the purpose of achieving equality in attendance or increased attendance or reduced attendance of persons of a particular race at these schools, and will be required to reorganize school attendance zones for such purposes.

IV.

Heretofore, on February 4, 1970, Petitioner adopted a resolution instructing the Superintendent of Schools and his staff to comply with this January 31, 1970 Order of the Court, and to complete implementation of the order of the court by March 16, 1970.

V.

Heretofore, on, to wit, February 27, 1970 the Legislature of the State of Alabama passed an act relating to the assignment of public school students within the State of Alabama, declaring that no student shall be assigned to or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; and no school district, school zone or attendance unit, by whatever name known, shall be established, re-organized or maintained for any such purpose. This act was signed into law by the Governor of the State of Alabama on, to wit, March 4, 1970. It is thus a valid law of the State of Alabama. A copy of this law is attached hereto, marked Exhibit A.

School Board Motion for Stay, Filed March 17, 1970

VI.

Heretofore, on March 4, 1970, Petitioner adopted a resolution instructing the Superintendent of Schools to comply with this law of the State of Alabama, as it was bound to do, being an agency of the State itself.

VII.

Heretofore, on March 16, 1970, this Honorable Court taking cognizance of both its own order of January 31, 1970 and of the act of the Alabama Legislature signed into law by the Governor on March 4, 1970, but without seeking to determine the constitutionality of the law, or declare the unconstitutionality thereof, entered an order requiring Petitioner to follow and comply with its previous order of January 31, 1970, within three days, failing in which a fine of $1,000 per day is assessed against each of the five members of the Board of School Commissioners until there is compliance. A copy of this order is attached hereto, marked Exhibit C.

VIII.

Petitioner desires to obey the law, however, by this combination of circumstances Petitioner is placed in a position of unavoidable conflict. Petitioner cannot at the same time be or remain in compliance with the Alabama Law and the orders of this Honorable Court hereinabove referred to. If Petitioner complies with one it will automatically be in disobedience to the other; and vice versa. The only way in which the conflict can be resolved is for this court to consider and determine the matter of the

constitutionality of this Alabama Law. To this end Petitioner is preparing for the purpose of filing in this Honorable Court as soon as possible an action calling upon this court to construe, determine and declare the constitutionality of the Alabama Law.

IX.

Petitioner respectfully moves that enforcement of the orders of this Honorable Court dated January 31, 1970 and March 16, 1970 be stayed pending the filing of such action, a hearing in the action and a determination of the issues presented in that cause.

School Board Motion for Stay, Filed March 17, 1970

EXHIBIT A

Enrolled, AN ACT, TO PREVENT DISCRIMINATION ON ACCOUNT OF RACE, COLOR, CREED OR NATIONAL ORIGIN IN CONNECTION WITH THE EDUCATION OF THE CHILDREN OF THE STATE OF ALABAMA. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section* 1. No person shall be refused admission into or be excluded from any public school in the State of Alabama on account of race, creed, color or national origin. *Section* 2. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors or national origins; and no school district, school zone or attendance unit, by whatever name known, shall be established, reorganized or maintained for any such purpose, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian, and further provided that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its pupils exclusively or primarily from members of such religion or denomination or from giving preference to such selection to such members or to make such selection to its pupils as is calculated to promote the religious principle for which it is established. *Section* 3. The provisions of this Act are severable. If any part of the Act is declared in-

valid or unconstitutional, such declaration shall not affect the part which remains. *Section* 4. All laws and parts of laws in conflict herewith are hereby repealed. *Section* 5. This Act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.

School Board Objection to a Portion of the Record, Filed March 27, 1970

Heretofore, on March 19, 1970, by letter to the Clerk of the District Court, Appellant (The United States Department of Justice) has sought informally to supplement the Record being certified to the Court of Appeals by furnishing the Clerk of the District Court with certain copies of maps and statistical tables and requesting their certification.

Objection must be taken to this *informal creation* of a record for certification to the court. Defendant would respectfully show:

1. The documents have not been admitted into evidence by the District Court; nor were they even offered into evidence.

2. Defendants have not been served, formally or informally, with a copy of the documents.

3. The documents have not been properly authenticated.

4. There is no testimony before the court as to the accuracy of these documents, how they were prepared or by whom, or supporting them in any other manner.

WHEREFORE, Defendant respectfully moves:

(a) That the documents concerned not be certified to the Court of Appeals.

(b) That the documents concerned be returned to counsel because they are not a part of the record in this cause.

(c) That the Court act upon this motion immediately.

District Court Order of August 12, 1970

Pursuant to Order of this Court of July 28, 1970, the following are hereby appointed as a Bi-Racial Committee in this cause for the purposes hereinafter recited:

Dr. Sanford D. Bishop
Mr. Isom Clemon
Mr. M. C. Farmer
Mrs. H. Eugene Gibbons
Mrs. T. C. Gill
Mr. Arthur Outlaw
Bishop W. T. Phillips
Mr. O. B. Purifoy
Mr. H. Minge Reed, Jr.
Mr. Beverly R. Wilson, Jr.

This Committee shall have the responsibility:

(1) To recommend to the Mobile County School Board and the Court ways to maintain a unitary system.

(2) To review the operation of the majority to minority transfer rule and the transportation system.

(3) To assist the Mobile County School Board in presenting to the Court problems encountered by the Board in the operation of its desegregation plan heretofore or hereafter modified and approved by this Court or the Court of Appeals for the Fifth Circuit.

(4) To consider the selection of school sites and suggest other special assignments as the Court may direct.

The Committee is authorized to make recommendations to the School Board and the Court in connection with these activities. The Chairman is to alternate annually between the races. Mr. Beverly R. Wilson, Jr. is appointed Chairman for the ensuing twelve months.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of August 12, 1970

Pursuant to the Order of the United States Court of Appeals for the Fifth Circuit of August 4, 1970, in this case, the Order of this Court of July 13, 1970, as amended July 30, 1970, is FURTHER AMENDED so that the elementary schools known as Robbins and Hamilton are to be paired.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Order of September 18, 1970

Before:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

BY THE COURT:

IT IS ORDERED that intervenors-appellees' motion for a stay of this court's order of August 28, 1970, pending the decision on the petition for rehearing en banc is hereby DENIED.

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

Supreme Court of the United States

No. 436 ------ , *October Term, 19* 70

Birdie Mae Davis, et al.,

Petitioners,

v.

Board of School Commissioners of Mobile County, et al.

ORDER ALLOWING CERTIORARI. Filed October 6 ---------- , 19 70.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth ----------. Circuit is granted. The case is set for oral argument immediately following No. 420.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.